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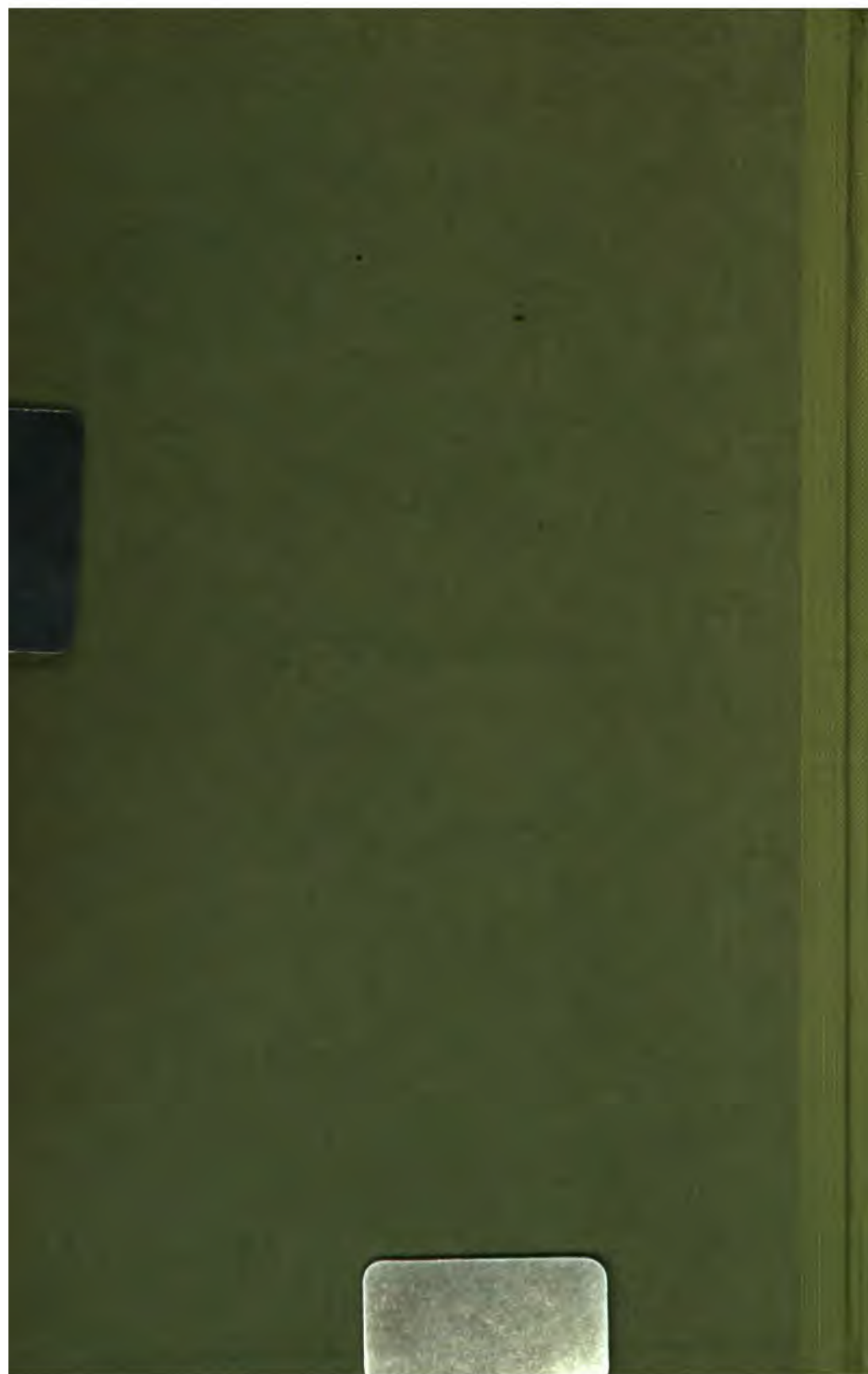
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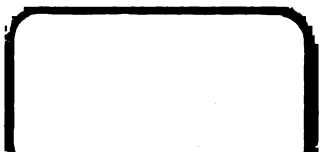
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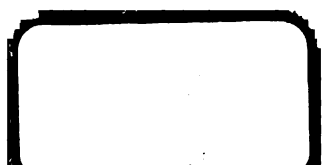


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THE CRIMINAL COURTS

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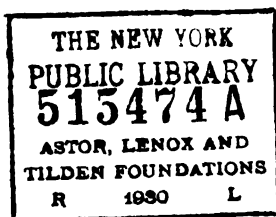
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OF THE BOSTON BAR



PART I

OF THE CLEVELAND FOUNDATION SURVEY OF
CRIMINAL JUSTICE IN CLEVELAND



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FOREWORD

THIS is the first section of the reports of the Cleveland Foundation Survey of Criminal Justice in Cleveland. Other reports to be published are:

Police, by Raymond Fosdick

Prosecution, by Alfred Bettman

The Treatment of the Convicted, by Burdette G. Lewis

Medical Science and Criminal Justice, by Dr. Herman M. Adler

Newspapers and Criminal Justice, by M. K. Wisheart

Legal Education of the Cleveland Bar, by Albert M. Kales

Criminal Justice in Cleveland, a Summary, by Roscoe Pound

The reports are being published first in separate form, each bound in paper. About November 1 they will be available in a single volume, cloth bound. Orders for subsequent separate reports or the bound volume may be left with book-stores or with the Cleveland Foundation, 1202 Swetland Building.

TABLE OF CONTENTS

	PAGE
FOREWORD	v
LIST OF TABLES	xi
LIST OF DIAGRAMS	xiii
ILLUSTRATIONS	xiii
CHAPTER	
I. THE FUNDAMENTAL TROUBLE	1
II. STRUCTURE OF THE PRESENT SYSTEM	3
III. THE SYSTEM IN PRACTICE	5
Influences Evoked by Arrests	5
The Professional Criminal Lawyer	5
Too Many Steps in the Procedure of Justice	6
How the System is "Worked" for Weak Spots	10
What Steps may be Eliminated	18
Results of Unified Court in Detroit	20
IV. THE BENCH AND ITS BACKGROUND	23
Importance of the Bench	23
Personnel	23
Recent Changes in the Election Laws	25
Apparent Effects of these Changes	26
The Underlying Cause for Dissatisfaction	31
Importance of the Petty Politician	33
The Influence of Groups	35
1. Racial and Religious Appeal	35
2. Labor Organisations	36
3. Bar Association and the Civic League	37
Publicity	40
1. Self-Advertisement	41
2. Exploitation of the Police Court	43
3. Character of the News	45
4. Campaign Funds	45
Recommendations	45
1. Appointed and Elected Judges	46
2. The Use of Vacancies	48
3. Selection in the Usual Course	48
4. Joint Committee on the Judiciary	49
V. THE MUNICIPAL COURT	50
Physical Conditions	50
Decorum	51
Separate Sessions Recommended	52

CHAPTER	PAGE
Shifting Cases from One Judge to Another	52
Scant Attention to Individual Cases	54
Bad Effects of Many Continuances	54
The "Motion in Mitigation"	57
The "Police Court Ring"	58
Bail Bonds	62
The Clerk's Office	64
Recommendations	67
VI. THE COMMON PLEAS COURT	69
History and Jurisdiction	69
Physical Conditions	69
Decorum	70
Terms of the Court	70
Lack of an Executive Head	71
"Loafing Judges"	71
Fluctuating Policies	75
Inability to Use Personnel to Best Advantage	76
Assigned Counsel	82
Bail Bonds	85
The Clerk's Office	86
The Assignment Commissioner	87
Recommendations	88
VII. THE COURT OF APPEALS	89
History and Jurisdiction	89
Dispatch of Business	90
Results of Appealed Cases	90
Failure of Clerk's Office to Act Promptly	91
Bail Bonds Pending Error	92
Recommendations	92
VIII. SUSPENDED SENTENCES, "NOLLES," AND PLEAS OF GUILTY TO LESSER OFFENSE	94
Police and Prosecutors not Best Advisers to the Court	95
Public Clamor Followed	95
Cases "Paroled" in January, 1917	96
Paroling in the Dark	98
"Nolling" Cases	100
Recommendations	101
1. Preliminary Suggestions	101
2. An Adequate Probation Department	102
3. A Central Bureau of Information	103
IX. MOTIONS FOR NEW TRIAL	104
Frequency	104
Analysis of Results	105
Clear Policy Recommended	108
X. PERJURY	109
Meaning of the McGannon Trial	109
Laxness in Punishing Offenses Against Justice	110
Recommendations	111

CHAPTER	PAGE
XI. JURIES	112
General Dissatisfaction	112
History	112
The Present System	113
Weaknesses	115
First Examination of Jurors	116
Second Examination of Jurors	120
Occupation of Jurors	121
Haven of the Unemployed	124
Recommendations	125
XII. SUMMARY OF RECOMMENDATIONS	126
Organization and System	126
Personnel: Elections	128
The Defects and Evils in the Present System	129
Disrespect for Law	129
Evils in Organization	131
Personnel: Politics	134
Suggestions and Recommendations	135
As to Personnel	136
As to Organization	138
Civic Responsibility	143

LIST OF TABLES

TABLE	PAGE
1. Disposition of Felony Cases Begun in 1919	9
2. Disposition of Felony Cases, 1914-1920, from the Records of the Division of Police	13
3. Dispositions of Cases of 27 Political Lawyers Compared with Dispositions of all Other Cases Begun in 1919 in the Common Pleas Court	16
4. Sentences and Suspension of Sentences of the Cases of 27 Political Lawyers Compared with the Sentences of all Other Cases Begun in 1919	17
5. The Detroit Court; Police Record of Four Major Crimes of Professional Nature	21
6. Results of Unified Criminal Court in Detroit	21
7. Age on Election or Appointment, Common Pleas Court	29
8. Opportunity for Private Practice, Common Pleas Court	29
9. Total Years of Experience, Common Pleas Court	30
10. Shifting of Cases in Municipal Court, January, 1921	53
11. Original Dispositions of Cases in Municipal Court, January, 1921	53
12. Comparison of Number of Civil and Criminal Cases per Judge, Municipal Court, 1919	54
13. Average Number of Days Between Arrest and Sentence, Municipal Court Cases, 1919-20, Classified by Disposition and by Type of Case	55
14. Cases of Liquor Law Violation Arraigned in January, 1921	56
15. Persons Arrested from January 1, 1918, to December 14, 1918, Released on Bail Bonds Signed by.....and Represented by.....and .....Attorneys	60
16. Disposition of Cases of 125 Known Criminals	61
17. Average Time per Case by Classes of Disposition	76
18. Disposition of Cases Classified by Judges Hearing Them	78
19. Cases Classified by Kinds of Sentences, Suspension, and Judges Hearing Them	79
20. Rank of Judges by Percentages of Specified Dispositions in Cases Tried by Them	80
21. Summary of Ranks of Each Judge in the Seven Disposition Classes of Table 20	81
22. Cases Classified by Disposition and by Counsel Appointed, not Appointed, or Unknown	83
23. Sentences Classified by Executed and Suspended Sentence and by Counsel Appointed and not Appointed	84
24. Motions for New Trial, by Judges	104
25. Disposition of 41 New Trials Granted in 1919	105

TABLE	PAGE
26. Reasons for Failure to Qualify of 6,520 Persons Called for Jury Service, Classified by Typical Residential Sections	117
27. Results of Second Examination of Jurors, Classified by Wards and Other Political Subdivisions	120
28. Summary by Selected Residential Districts of the Numbers of Jurors Called, Qualified, and Served	121
29. Reasons for Excusing Persons from Jury Service, January Term, 1921 (Rec- ords for 65 Jurors Missing)	121
30. The Occupations of Jurors, April 18-May 18, 1921, as Reported by Them, by Groups of Related Vocations	122

LIST OF DIAGRAMS

DIAGRAM	PAGE
1. The disposition of each 1,000 cases of felony arrests	8
2. The path of justice	10
3. Comparison of severity in sentencing with decreasing tendency to bring cases to sentence; felony cases, Common Pleas Court, 1914-20	15
4. Comparison of decline of "bench paroling" with the increase of allowing " <i>nolle prosequi</i> "	15
5. The legal career of judges of the Common Pleas Court, 1885 to the present, with respect to their ages and their public and private services	27
6. The legal career of judges of the Municipal Court, 1911 to the present, with respect to their ages and their public and private services	28
7. Comparison of number of cases filed during the month with the number on the list ready for trial at the beginning of the month; Municipal Court, January 1, 1919, to August 1, 1921	73
8. Comparison of the number of cases filed during the term of court with the number of cases on list pending at the opening of the term, January, 1919, to April, 1921	74

ILLUSTRATIONS

	FACING PAGE
Page from the conviction book, January, 1917, term of Common Pleas Court, showing the number of paroles	96
Page from the conviction book, September, 1920, term of Common Pleas Court, showing the relatively small number of paroles	97

THE CRIMINAL COURTS

CHAPTER I

THE FUNDAMENTAL TROUBLE

ANALYSIS of the administration of criminal law in Cleveland reveals a failure of self-government in one of the city's most vital functions. It does not, or should not, matter to the citizens of Cleveland that other large American cities have failed, for Cleveland has at times won national recognition for its pride and leadership in civic affairs. Moreover, the success of the democratic experiment in America requires that no community shall tolerate conditions found to exist in this city once the facts are known.

Care must be taken not to ascribe the Cleveland failure to the evil work of individuals alone, although undoubtedly there has been exploitation by those whose elimination would have a salutary effect. Their removal, however, would not effect a cure. On the contrary, popular clamor for a victim diverts attention from the real difficulties, which are not capable of so easy and dramatic a solution. The conditions which make exploitation possible must be removed before permanent improvement can be effected.

These conditions are, first, the persistence of a system of criminal justice become obsolete and wholly inadequate through the rapid growth of urban population and modern industrial life; and, second, the unorganized, uninformed, and socially indifferent attitude of the more intelligent portion of the citizenship, brought about by concentration on material prosperity to the exclusion of civic life. The pages of this report tell the story, often in bare statistical form, of how an inadequate system is made use of to defeat the ends of criminal justice in the absence of an informed and watchful social conscience.

Signs are not wanting that Cleveland is waking up to this situation. A growing perception and outspokenness on the part of some judges and other public officials is one of a number of such symptoms. Men of ability are coming forward to devote their services to the public interest; the Bar Association, the press, and the legislators from Cuyahoga County

are becoming more alert. The "crime wave" and several notorious cases have aroused the community to action, with the result that Cleveland has taken the unusually courageous step of asking for and publishing a survey of its administration of justice. It remains to be seen whether this interest is a mere spasmodic outburst of energy, or whether Cleveland is really ready to undertake the task of changing underlying conditions, and, having changed the system, its sources and its atmosphere, to maintain an aroused and informed civic conscience which will prevent a relapse to old evils.

CHAPTER II

STRUCTURE OF THE PRESENT SYSTEM

THE present method of administering criminal law is built upon two court systems, two prosecutors' offices, and a grand jury.

The criminal division of the Municipal Court has jurisdiction over misdemeanors,¹ violations of city ordinances, and preliminary examinations in cases of felony. Its misdemeanor jurisdiction is reviewable by the Court of Appeals or the Common Pleas Court for errors of law only, so that the system avoids the evil of permitting two trials on the merits, which is so common to American cities with inferior and superior courts. A defendant who desires a jury trial must claim it seasonably²—but there are relatively few such trials.³ The geographic jurisdiction of the Municipal Court is limited to the city of Cleveland.

When a person is arrested for a felony, the Municipal Court holds a preliminary examination, unless the defendant waives his right to such examination. If the court finds there is probable cause, or the examination is waived, the court has the power to "bind over" to the grand jury. The grand jury sits practically continuously except during July and August, which is another advantage over many cities. The prosecuting attorney for Cuyahoga County then presents evidence to the grand jury, and if a *prima facie* case is made out, the grand jury returns a "true bill," stating the crime for which the defendant is indicted, after which the case proceeds before a judge of the Common Pleas Court through the usual stages of arraignment, plea, trial, and disposition. In all its essentials the theory of handling felonies is the same as it has been for hundreds of years, and is now used, in village and metropolis alike, throughout the country.

The Common Pleas Court has geographic jurisdiction throughout Cuyahoga County, so that some of its cases come from petty magistrates

¹ Misdemeanors are violations of State laws not punishable by imprisonment in the penitentiary.

² Ohio General Code 1579, Section 24.

³ In 1920, out of 2,608 cases, there were only 15 jury trials.

outside the city of Cleveland. The number of such cases is not large.¹ Occasionally the grand jury returns an indictment without prior proceedings, usually where it would be inadvisable to warn the defendant by proceedings in an inferior court.²

This is the general structure of the Cleveland system. We now observe how it works in practice.

¹ Among all cases begun in the Common Pleas Court in 1919, the number of such cases was 98, or 3.9 per cent.

² Among all cases begun in the Common Pleas Court in 1919, the number of original indictments was 306, or 12.1 per cent.

CHAPTER III

THE SYSTEM IN PRACTICE

INFLUENCES EVOKED BY ARRESTS

A STUDY of the practical working of criminal justice should begin with some consideration of the powerful dynamic agency released through the arrest of a man upon a serious charge. The instinct of self-preservation sometimes leads a felon to commit murder in resisting arrest, and once in custody, his whole being is concentrated upon the single idea of getting out. Parents and relatives, who had apparently given him up as a lost soul, rally loyally to rescue him from the penitentiary, often pledging their last cent for the purpose. Few felons are so disreputable that there is no one to fight for their liberty.¹ The friends who do not come forward willingly are forced into line by every human incentive. It is often surprising how far and into what regions this active agency can penetrate. "Beginning in the slums, among the recidivists," observed the oldest judge on the Cleveland bench, "waves of influence are set up that reach higher and higher until they envelop respectability. Men with spotless reputations, whose motives cannot be doubted, will urge a judge to parole a professional criminal. How did they get there? The trail leads back to the slums—investigate the twilight zone."²

THE PROFESSIONAL CRIMINAL LAWYER

Another factor to be considered, partly the result of the foregoing and partly the result of many other causes, is the professional criminal lawyer. A poll of the bar of Cleveland shows that most lawyers dislike criminal practice, partly because of a feeling that it is detrimental to civil practice and partly because of professed ignorance or dislike of the required technique. The result is that a large part of the lucrative practice in the

¹ During April, 1921, a number of gangsters were arrested for murder. The following day an audacious payroll robbery occurred. "Raising money for the boys' defense," remarked an old detective knowingly.

² Following a most atrocious double murder and payroll robbery, a number of typical pool-room habitués were arrested as suspects. Bail of \$40,000 each for some of these men was promptly furnished from most respectable sources.

criminal courts goes to a small number of specialists. Considering all the Common Pleas criminal cases begun in 1919, we find 244 lawyers appearing in a total of 363 cases, no single lawyer appearing in more than three cases, against 89 lawyers appearing in a total of 842 cases,¹ no one appearing *fewer* than three times. About one-fourth of the privately retained lawyers appeared in more than two-thirds of the cases. Twenty-eight lawyers appeared 10 or more times each in 492 cases, or one-twelfth of the lawyers in considerably more than one-third of the cases. Moreover, many of this small group of professional criminal lawyers are in politics. Were the system as invulnerable as Achilles, these political criminal lawyers would find the penetrable heel.

Opposed to these forces is the prosecutor's office, consisting chiefly of underpaid and often inexperienced assistants, with no personal interest in the cases, and without a tradition of energetic public service. Under such conditions the best system of criminal justice would be subjected to strain, and it is not surprising that the present antiquated system has broken down.

TOO MANY STEPS IN THE PROCEDURE OF JUSTICE

To a layman, or a lawyer in civil practice, the administration of criminal law means a jury trial in open court. The civil lawyer understands that in this ordeal by battle between the prisoner's champion and the prosecutor, the State is under a burden of strict rules of evidence which make convictions difficult to obtain. He may also realize the disparity in ability between the poorly paid prosecutor and the retained private lawyer, and the manifest failure of the State to assure adequate preparation for trial.² What he fails to grasp fully, and what the layman also does not realize, is that the dramatic episode of a trial is relatively only a small part of the system.

In the first place, many offenses are committed for which no one is arrested. This is a problem of police administration. After an arrest is made, the police may release the prisoner because of insufficient evidence, or turn him over to other authorities. In Cleveland there is a practice in the police department of releasing, or "golden-ruling," first offenders, but this practice is rarely used in felony cases. These matters are all questions of police policy. Once a man is held, however, the judicial processes begin to operate. The police prosecutor may report "no

¹ This is exclusive of cases where counsel was appointed by the court to aid indigent prisoners and cases in which more than one lawyer appeared for the defense.

² This is dealt with in detail in the report on the prosecutor's office.

papers," in which case the prisoner is released without further proceeding. Or the police prosecutor may move to "nolle"—i. e., *nolle prosequi*¹—the case, which also liberates the prisoner. The lower court may find that there is "no probable cause" and discharge the prisoner. The grand jury may fail to indict a defendant by returning a finding of "no bill." If a man is indicted, the prosecuting attorney in the Common Pleas Court may move to "nolle" the case. The defendant may plead guilty, either on arraignment or by change of plea later. In addition, among the cases begun in 1919, a number disappeared in ways not properly classed as dispositions; for instance, those who were never arrested after indictment and those who jumped their bail in the Common Pleas Court.

A diagram based upon a study of all cases begun in the Common Pleas Court during 1919, supplemented with information supplied by the police department with respect to disposition of felony cases outside of this court, would look approximately as in Diagram 1.

A more detailed picture may be gathered from Table 1.

Classifying these dispositions under general heads, and adding the events that may occur before a case reaches the Common Pleas Court and after conviction, we have the following enumeration of different methods by which it is possible for an offender to escape under the guidance of an expert:

FELONIES AND MISDEMEANORS (MUNICIPAL COURT)

1. "No papers"
2. "*Nolle prosequi*"
3. Discharge, want of prosecution
4. Discharge after hearing

Misdemeanors—Municipal Court

5. Suspended sentence
6. New trial
7. Appeal
8. Parole from workhouse

Felonies—Common Pleas Court

5. "No bill" by grand jury
6. Failure to arraign
7. "*Nolle prosequi*"
8. Discharge, want of prosecution
9. Not guilty after trial
10. Plea guilty of lesser offense
11. Suspended sentence
12. New trial
13. Appeal
14. Parole from institution
15. Pardon

Throughout this procedure there is always the possibility of the defendant jumping bail should his case assume a hopeless aspect.

¹ Literally and in practice this means, "I am unwilling to prosecute." This motion, which has a long history, is the secret of great power in the prosecutor's office.

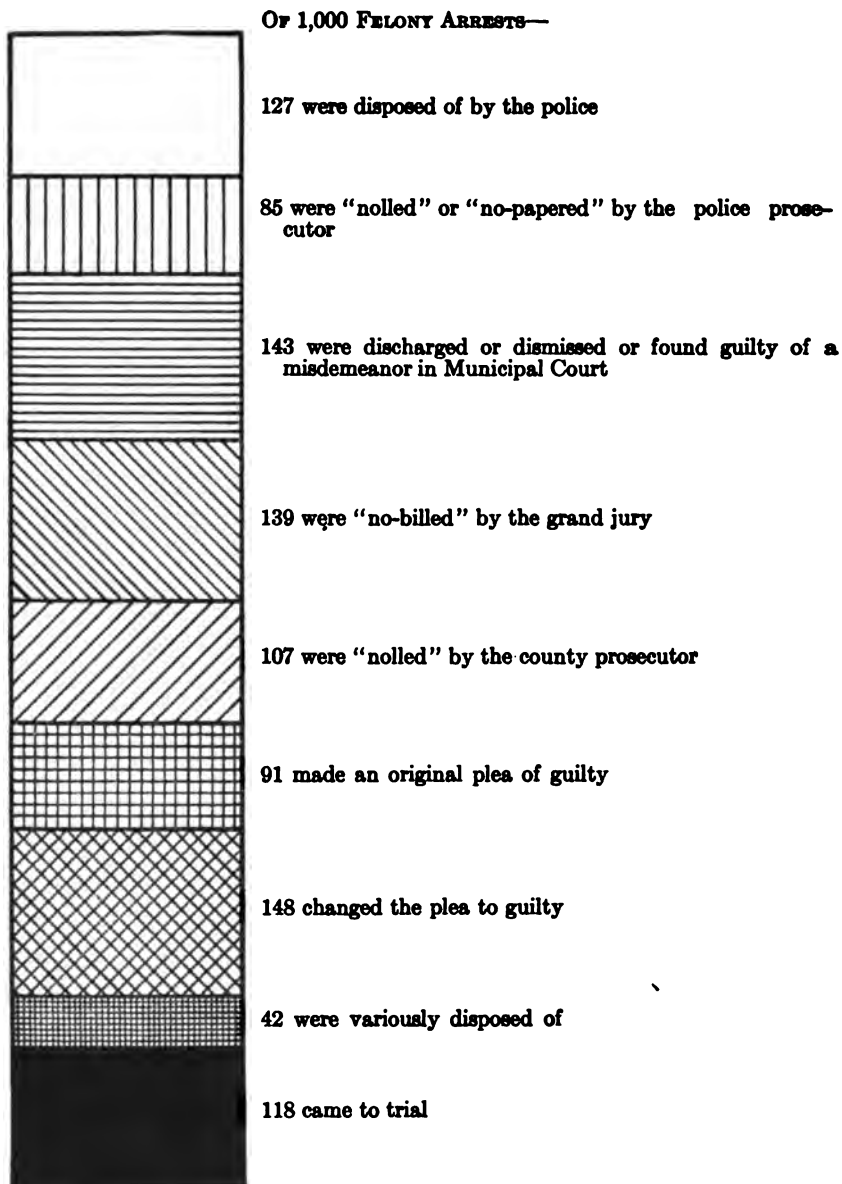


Diagram 1.—The disposition of each 1,000 cases of felony arrests

TABLE 1.—DISPOSITION OF FELONY CASES BEGUN IN 1919¹

1919	Number of cases	Per cent. of total cases	Per cent. Common Pleas cases
1. Total cases	4,499	100.00	..
2. Disposed of by the police	572	12.71	..
3. "No papers" and "nolled," Municipal Court	382	8.49	..
4. Discharged, dismissed, or charges reduced to misdemeanors, Municipal Court	644	14.31	..
5. Bound over	2,901	64.48	..
CASES BEGUN IN 1919			
6. "No bill" by grand jury	697	15.49	..
7. Total disposed of in Common Pleas Court	2,539	..	100.0
8. Total disposed of on plea of defendant	1,215	..	48.0
9. Total disposed of not on plea of defendant	1,324	..	52.0
10. Subdivisions of 8:			
a. Original plea guilty	433 ✓	..	17.1
b. Original plea guilty lesser offense	22 ✓	..	0.9
c. Original plea not guilty, changed to guilty	550 ✓	..	21.7
d. Original plea not guilty, changed to guilty of lesser offense	193 ✓	..	7.6
e. Others	17 ✓	..	0.7
11. Subdivisions of 9:			
a. Nolled for all causes	536 "	..	21.1
b. Not arraigned	57 ✓	..	2.2
c. Bail forfeited	33 ✓	..	1.3
d. Dismissed or discharged	31 ✓	..	1.2
e. Trial, not guilty of felony	215 ✓	..	8.5
f. Trial, not guilty of misdemeanor	8 ✓	..	0.3
g. Trial, guilty of felony	293	..	11.6
h. Trial, guilty of misdemeanor	74	..	2.9
i. Others	77	..	2.9
Total	1,324	..	52.0
12. Subdivisions of 11 a:			
a. Nolled after commitment for insanity	2	..	0.1
b. Nolled after new trial granted	13	..	0.5
c. Nolled after jury disagreement	6	..	0.2
d. Nolled after plea guilty on other counts	6	..	0.2
e. Nolled after conviction on other counts	5	..	0.2
f. Nolled after transfer to Juvenile Court	21	..	0.8
g. Nolled because defendant already sentenced	84	..	3.3
h. Nolled on all counts, no reason assigned	399	..	15.8
Total	536	..	21.1

¹ This table is composed of figures from three different sources: item 2 is from the records of the Division of Police; items 3, 4, and 5 are from summaries of the figures of the execution docket of the Municipal Court from December 19, 1918, to December 31, 1919, and the remainder are from the survey statistics of the cases begun in 1919 in the Common Pleas Court. Since this court handles cases besides those from the Municipal Court, the totals, 2,901 ("bound over") and 3,236 ("no bill" plus "total disposed of"), are not identical. In Table 1, 4,499 is regarded as the base, and the proportions of various dispositions for all Common Pleas cases are assumed to apply to the 2,901 cases bound over. See Table 3 in the report on prosecution.

No. 10238

Year	Charge	Disposition or explanation
1911	Robbery	"Bench parole"
1911	Attempted burglary	Discharged in Municipal Court
1911	Violating parole	Turned over to Ohio State Reformatory
1914	Forgery	No bill
1915	Burglary and larceny	Plead guilty to petit larceny
1915	Suspicious person	Sentence, 30 days
1915	Assault to rob (two cases)	"Bench parole"
1916	Assault to rob	No bill
1916	Burglary	Not guilty
1916	Contempt of court	Discharged
1916	Intoxication	Suspended sentence
1916	Intoxication	Sentenced, \$25 and 30 days
1916	Burglary and larceny	"Nolled"
1919	Burglary and larceny	Plead guilty to petit larceny
1919	Robbery	Not guilty
1919	Suspicious person	Discharged
1920	Burglary and larceny	Plead guilty to petit larceny
1921	Suspicious person	Sentenced to \$25 fine

No. 12919¹

1914	Assault to rob	"Nolled" in Common Pleas Court
1919	Receiving stolen property (auto-mobile body)	Disagreement
1920	Suspicious person	"Nolled"
1920	Auto-stealing (five indictments)	Guilty; appeal; petition in error never entered; sentenced to Ohio State Reformatory
1921	Murder and robbery (while out on bail after conviction on fourth charge)	Sentenced to be electrocuted

No. 10480

1910	Assault and battery	Discharged
1911	Assault and battery	Suspended sentence
1911	Assault and battery	Discharged
1911	Assault and battery	Suspended sentence
1911	Indecent language	Discharged
1911	Assault and battery	Discharged
1911	Violating sidewalk ordinance	
1911	Assault to kill (fractured victim's skull with iron bar)	Convicted of assault and battery
1911	Murder (assault)	Plead guilty to manslaughter. Sentence, one year
1917	Murder (shooting)	Convicted of manslaughter

No. 10482

1897	Grand larceny	Sentenced, \$100 and 30 days for receiving stolen property
1906	Assault and battery	Discharged
1911	Violating Sunday law (saloon open)	Suspended sentence
1911	Assault and battery	Discharged

¹ Head of an organized band of auto thieves. See *Ohio Motorist*, February, 1921.

No. 10482—Continued

Year	Charge	Disposition or explanation
1911	Murder	Plead guilty to assault and battery; suspended sentence
1915	Carrying concealed weapons	Discharged
1916	Receiving stolen property (automobile)	Indicted November 14, 1916 "Nolled" April 10, 1919
1916	Receiving stolen property (automobile)	Indicted November 14, 1916 "Nolled" March 15, 1918

No. 7042¹

1905	Grand larceny (30 pairs shoes)	Plead guilty to petit larceny
1910	Burglary and larceny	No bill
1913	Suspicious person	Discharged
1914	Suspicious person	"Nolled"
1914	Grand larceny (automobile)	Turned over to Geneva authorities
1915	Suspicious person (pocketpicking)	Discharged
1915	Suspicious person	Discharged
1916	Pocketpicking	Never arraigned
1917	Suspicious person	"Nolled"
1917	Rape (identified by victim)	Discharged in Municipal Court
1917	Suspicious person (pocketpicking)	"Nolled"
1918	Suspicious person	"Nolled"
1918	Violating auto law	Discharged in Municipal Court
1918	Grand larceny	Not arrested
1918	Robbery (wounded two policemen in escaping)	Not arrested
1918	Murder (killed policeman in escaping)	Not arrested
1919	Grand larceny (safe-blowing)	

No. 9407

1909	Burglary and larceny	
1909	Petit larceny	Sentence, \$25 and 30 days
1910	Burglary	Houston, Texas; sentenced to \$100 and three months
1910	Petit larceny	Suspended sentence
1910	Petit larceny	No papers
1911	Grand larceny	Toledo, O.; sentenced to Ohio State Reformatory
1913	Grand larceny	State of Washington; sentenced to penitentiary
1913	Grand larceny	Discharged in Municipal Court
1913	Grand larceny	Discharged in Municipal Court
1916	Forgery	Discharged in Municipal Court
1916	Petit larceny	Discharged
	Assault and battery	Discharged
	Disturbance	Discharged
1916	Housebreaking (two cases)	Discharged in Municipal Court
1916	Robbery	
1917	Robbery (three cases)	"Nolled" (because of Federal action), see below
1917	Robbery	
1917	Robbery (post-office)	Sentenced by Federal court, seven years in Atlanta Penitentiary

¹ Arrested in 1919 for the larceny, robbery, and murder of 1918 and the grand larceny of 1919; plead guilty to homicide on the murder; judge found second degree murder and sentenced him for life June 27, 1919. Other cases "nolled."

If we observe the operation of the system over a series of years, its weaknesses become clearer. Through the industry and courtesy of George Koestle, superintendent of the Bureau of Criminal Identification, of the Division of Police, the figures on the dispositions of felony cases for years 1914-1920 inclusive are available in Table 2. The arrangement has been changed somewhat, and a number of adjustments made with the approval of Mr. Koestle, but otherwise the basic figures given are exactly as compiled by the Bureau.

TABLE 2.—DISPOSITION OF FELONY CASES, 1914-1920, FROM THE RECORDS OF THE DIVISION OF POLICE

	1914	1915	1916	1917	1918	1919	1920
1. Total number felony arrests	1,705	2,157	2,749	3,611	3,561	3,460	3,788
2. Total accounted for by action other than that of Municipal or Common Pleas Court	82	278	344	441	494	625	822
3. Cases pending in Municipal Court	50	32	57	54	80	57	63
4. Cases disposed of by Municipal Court	1,573	1,847	2,348	3,116	2,987	2,778	2,903
a. Bound over to grand jury	1,263	1,491	1,916	2,443	2,432	2,120	2,235
b. "Nolle prossed"	122	125	173	263	227	210	294
c. Discharged in Municipal Court	186	231	259	410	328	448	374
5. Total cases, Common Pleas Court	1,398	1,794	1,963	2,829	2,636	3,325	2,891
a. Cases in which no true bill is found	279	338	501	623	768	745	617
b. "Nolle prossed"	154	268	260	494	395	662	933
c. Tried and acquitted	26	43	64	151	72	234	182
d. Number insane	..	..	..	2	1	4	1
e. Balance found guilty or plead guilty	939	1,145	1,138	1,559	1,400	1,680	1,158
I. Sentenced but paroled	240	272	283	340	233	216	81
II. Returned as parole violators	11	24	17	24	22	27	4
III. Sentence suspended	61	77	72	86	170	131	50
IV. Miscellaneous	..	..	2	14	6	14	20
V. Sentence carried out	627	772	764	1,101	969	1,292	1,003

Glancing at Table 2 makes it apparent that the "crime wave" has not been created wholly by a "yellow press." It must be noted also that this table includes only the serious criminal cases (felonies), so that the table would be unaffected by temporary strictness or relaxation in dealing with offenses usually the subject of reform, such as drunkenness, gambling, and prostitution. The population of Cleveland increased 42 per cent.

from 1910 to 1920, yet arrests for serious crime since 1914 only have increased 122 per cent., cases bound over 77 per cent., and the number of cases in the Common Pleas Court over 100 per cent. The number which were actually found or which pleaded guilty had increased 79 per cent. in 1919, but in 1920 dropped to 23 per cent., the lowest figure since 1916.

It happens that the period covered furnishes an opportunity to demonstrate the ability of the criminal lawyer to find the weak spots in the system. For some time before 1914, and for several years thereafter, Cleveland justice tended toward "sentimentalism," expressed by an excessive use of the "bench parole" (probation), more fully considered in a succeeding chapter. Shortly after the entry of this country into the World War the attitude of the public changed, and with the advent of the "crime wave" shifted to the opposite extreme. Judges responded by cutting bench paroles from 25 per cent. of the sentences in 1914 to 7 per cent. in 1920.

This gradual shutting off of the judicial "parole" forced the criminal lawyer to look elsewhere for relief. The principal sources of such relief were: (a) "nolles" in the Municipal Court; (b) discharges at the preliminary examination in the Municipal Court; (c) "no bills" by the grand jury; (d) "nolles" in the Common Pleas Court; (e) trial and acquittal by juries. A glance at the figures shows that all these sources have been called upon. Although the number of felony dispositions in the Municipal Court increased only 84 per cent. from 1914 to 1920, the number of "nolles" in that court increased 140 per cent. and the number of discharges 101 per cent. The number of dispositions in the Common Pleas Court increased 106 per cent. in the same period, but the number of "no bills" increased 121 per cent., the number of "nolles" 506 per cent., and the number of trials and acquittals 600 per cent. The increasing tendency to keep cases away from the discretion of the court is more marked in the Common Pleas Court than in the Municipal Court, probably because the lower court had already been "worked" almost to the saturation point.

Apparently there is a kind of Gresham's law in the administration of criminal justice. Just as cheaper currency tends to drive out dearer, so the slacker agencies tend to oust the stricter of jurisdiction. Diagrams 3 and 4 show plainly this tendency.

The increasing severity of the courts is shown in Diagram 3, which gives the change in the percentage ratio of sentences executed to all sentences. All cases which reached the judge for disposition, by *plea* or *conviction*, are included. The curve of all cases sentenced, based on a percentage of all the cases disposed of by the court, shows the increasing tendency to *keep cases away from the judge*, chiefly by "nolling," trial and acquittal, and "no bill."

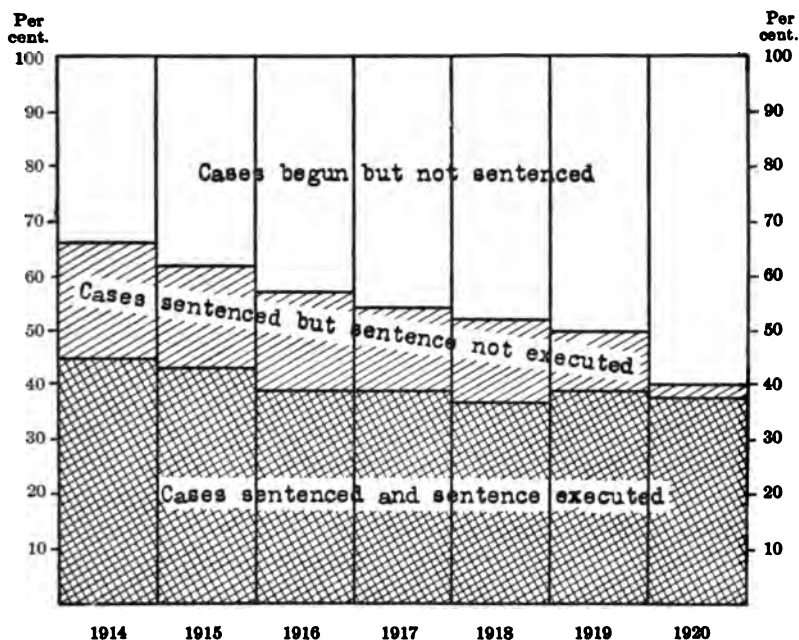


Diagram 3.—Comparison of severity in sentencing with decreasing tendency to bring cases to sentence. (Common Pleas Court, 1914-20)

Diagram 4 shows the same tendency in more specific form, the percentage of "bench paroles" of cases sentenced being compared with the

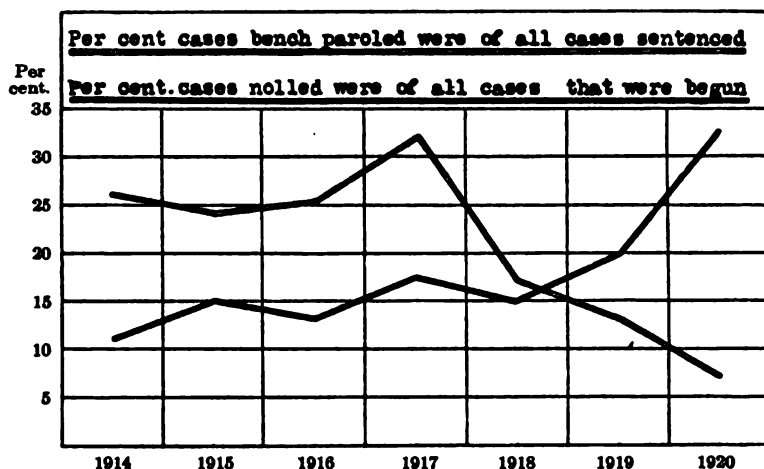


Diagram 4.—Comparison of decline of "bench paroling" with increase of allowance "nolle prosequi"

percentage of cases "nolled" of all cases disposed of. The reciprocal action is clear.

How the system is "worked" for weak spots may also be seen in Tables 3 and 4 by comparing the dispositions and suspended sentences of Common Pleas cases obtained under the guidance of the most sophisticated criminal lawyers, with the results in other cases. For the purposes of these tables, criminal lawyers with political affiliations were chosen. A list of all lawyers having more than 10 cases each begun in 1919 was sent to a Cleveland lawyer thoroughly familiar with the local bar. This lawyer, without knowing the figures for any names in the list, marked the attorneys with political leanings and his judgment was accepted. The figures are not as significant as a selected list would show because the names chosen for political affiliations include several high-minded men who are not primarily criminal lawyers at all. The comparison does not necessarily throw discredit upon the lawyers selected: it does reveal a system which lends itself to manipulation. It is to be regretted that the absence of proper records prevents a similar comparison being made for the earlier stages of the cases in the Municipal Court.

TABLE 3.—DISPOSITIONS OF CASES OF 27 POLITICAL LAWYERS¹ COMPARED WITH DISPOSITIONS OF ALL OTHER CASES BEGUN IN 1919 IN THE COMMON PLEAS COURT

	Number of cases of 27 political criminal lawyers	Number of all other cases	Per cent. of cases of 27 political criminal lawyers	Per cent. of all other cases
Total cases	412 ✓	2,127 ✓	100.0 ✓	100.0
Total pleas of guilty	147 -	1,068 -	35.7	50.2
Original pleas of guilty	10	418	2.4	19.7
Original pleas of not guilty changed to plea of guilty	101 ✓	449	24.5	21.1
Original pleas of not guilty changed to plea guilty of misdemeanor	33	160	8.0	7.5
Other pleas	3	41	0.7	1.9
Total disposed of by trial	127	463	30.8	21.9
Guilty of felony after trial	60 ✓	233	14.6	11.0
Guilty of misdemeanor after trial	17 ✓	57	4.1	2.7
Not guilty of felony after trial	50	165	12.1	7.8
Not guilty of misdemeanor after trial	..	8	..	0.4
"Nolled" on all counts	104	295	25.2	13.9
All other dispositions	34	301	8.3	14.2

¹ Having more than 10 cases each among all cases begun in 1919 in the Common Pleas Court.

The sagacity of the criminal lawyers may be seen in the fact that they allowed scarcely more than a third of their clients to plead guilty as compared with more than half of the others; that of those who did plead guilty, proportionately only one-sixth as many pleaded guilty upon arraignment as compared with the others, showing a tendency on the part of the criminal lawyers not to surrender until they had made a deal with the prosecuting attorney, or until it was clear their cases were hopeless; that of those who pleaded guilty the proportion who were allowed to plead guilty to a lesser offense was half again as great as in the other cases. Most striking is the proportion of nearly twice as many cases "nolled" by the prosecuting attorney, and 50 per cent. more cases tried by jury.

Even during a period in which judges were stiffening in the matter of "bench paroles" and suspended sentences, the political criminal lawyer has been able to snatch some advantage for his clients, although the courts have not yielded in this respect as much as other agencies. Of those who were sentenced, proportionately 20 per cent. more secured suspended sentences when represented by these lawyers than when represented by the bar at large.

TABLE 4.—SENTENCES AND SUSPENSION OF SENTENCES OF THE CASES OF 27 POLITICAL LAWYERS¹ COMPARED WITH THE SENTENCES AND SUSPENSION OF SENTENCES OF ALL OTHER CASES BEGUN IN 1919

	27 political criminal lawyers	All other cases	Per cent. of cases 27 lawyers	Per cent. of other cases
Total cases	412	2,127	100.0	100.0
No sentence indicated	182	755	44.2	35.5
Total sentenced	230	1,372	55.8	64.5
Total sentence suspended	58	293	14.1	13.8
Total sentence executed	172	1,079	41.7	50.7
Total sentenced for felony	124	780	30.1	36.7
Total sentence felony suspended	38	203	9.2	9.5
Total sentence felony executed	86	577	20.9	27.1
Total sentence misdemeanors	106	592	25.7	27.8
Total sentence misdemeanors suspended	20	90	4.9	4.2
Total sentence misdemeanors executed	86	502	20.9	23.6
Total misdemeanors sentenced to fine only	40	257	9.7	12.1

¹ Having more than 10 cases each among all cases begun in 1919 in the Common Pleas Court.

WHAT STEPS MAY BE ELIMINATED

We have now seen enough of the system in operation to understand the fundamental difficulty, leaving to one side questions of personnel. The steps in the administration of justice are too numerous, involve too many agencies, and are too loosely guarded. It is the old difficulty of weak links in a chain. All unnecessary links should be eliminated, and those remaining should be made as strong as possible.

Those steps which may be eliminated to advantage are probably already obvious. The study of the county prosecutor's office brings out the folly of expecting efficient handling by the prosecuting attorney of cases which were dealt with in their vital stages, without his knowledge or attention, first by the police, and then by the police prosecutor.¹ The futility of entrusting the power to "nolle" to two sets of prosecutors is equally clear. Three different judicial agencies are asked to discharge the defendant because there is no *prima facie* case against him—the Municipal Court at the preliminary examination, the grand jury on presentment by the prosecutor, and the Common Pleas Court on motion to discharge or for a directed verdict.

The hardship on the State's witnesses in attending this multiplicity of hearings and continuances needs no comment, nor the fact that the State loses valuable testimony by this process of attrition. We have already seen that, of cases beginning in the Municipal Court, approximately 42 per cent. die in that court and the grand jury room, but it is not possible to tell how many other cases which survive these stages finally perish for lack of evidence which was available at the earlier stages. The average time from indictment to disposition of all Common Pleas felony cases begun in 1919—originating in the Municipal Court—was 46.3 days, but the average time from arrest to disposition was 67.8 days. This entire excess of 21.5 days per case is unnecessary and injurious. Also, as will be seen later, the dragging out of cases is largely responsible for bail bond trouble, since a speedy trial would often do away with the necessity of bail. It is, moreover, an injustice to a defendant to put him in a position where he may be called upon to furnish at least three bonds—first after arrest, then after being bound over, and finally after indictment.

A glance at Diagram 2 will show that all the steps in the Municipal Court, together with the grand jury, may be dropped to advantage. It should be enough if a judge finds there is probable cause to hold a defendant for trial, and the judge might better be a Common Pleas judge

¹ See report on prosecutor's office.

than a Municipal Court judge. The grand jury proceeding might be retained for special investigation only.

The trinitarian aspect of felony jurisdiction is the product of historical causes only. In feudal England, when the Common Law system was beginning, the king sent his judges on tour throughout the realm, so that the court sat for a certain time only in each county. It became necessary for local magistrates to examine and hold suspected felons in the interim, and for a grand jury of neighbors to meet occasionally to examine into all crimes committed in the county as preparation for the coming of the court. This custom was carried into pioneer America.¹ The function of holding suspected felons, admitting them to bail, and recognizing witnesses was conferred on justices of the peace.² In 1852 this *ad interim* jurisdiction was conferred upon the police court of Cleveland, and this was continued in the Municipal Court Act of 1910. To-day, however, the Common Pleas Court is permanently resident in Cleveland, and sits, or can sit, continuously throughout the year. Full exclusive felony jurisdiction could be conferred upon this court without any practical difficulty or injustice.

It may be queried whether there is any reason for continuing jurisdiction over misdemeanors in the Municipal Court. After consideration of the Municipal Court's work in this respect,³ it is recommended that this jurisdiction also be conferred on the Common Pleas Court. Again the reason for the separate jurisdiction is historical, due to the necessity of disposing of minor causes promptly, without waiting for the "terms" of the higher court. The Municipal Court inherits through the police court and justices of the peace.⁴ It is not true that petty criminal causes may safely be entrusted to judges of inferior quality. Such cases may not require a high order of legal ability;⁵ they emphatically need men of high character on the bench; for no other court comes so close to the lives of the mass of the people, or has a greater opportunity to inculcate respect for our institutions.

There are no legal difficulties in the way of transferring full criminal

¹ See Act of 1790, providing for government of the Northwest Territory, increasing the "terms" of the Common Pleas Court. See also Ohio Constitution, 1802, Article III, dividing the State into "circuits."

² See Act of 1804, specifically conferring this power on justices of the peace.

³ See Chapter V.

⁴ Misdemeanor jurisdiction also exists in the Probate Court, but this was at one time eliminated from Cuyahoga County in 50 O. L. 84 (1852). See Sec. 13424.

⁵ This is generally true of all criminal cases.

jurisdiction in all causes to the Common Pleas Court. The constitution provides simply that the jurisdiction of this court shall be fixed by law.¹ All that is necessary is an appropriate statute.

There may be more difficulty with respect to abolishing the grand jury and substituting therefor, if necessary, the prompt and compulsory information of the prosecuting attorney. Article I, Sec. 10, of the Ohio constitution provides that "no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury." A similar provision has been strictly construed.² An amendment to the constitution of Ohio would be necessary to administer justice in metropolitan communities without the compulsory use of a grand jury. Such a result, however, would be well worth the effort. There is no difficulty with respect to the Federal constitution.³

RESULTS OF UNIFIED COURT IN DETROIT

It may be said by the cynical that the organic changes suggested will do no good because the trouble is with "human nature." This sort of reasoning would never have advanced civilization beyond the stage of private vengeance and the blood feud. "Human nature," meaning thereby its least admirable traits, is effective only so far as opportunity and reward exist for wrongful effort. Reduce these, and improvement invariably results. Tangible evidence of this truth is seen in the recent history of Detroit. Before April, 1920, Detroit criminal justice was administered much as in Cleveland—by two sets of courts, with much duplication of judicial machinery. In April, 1920, the entire criminal jurisdiction of the city was vested in one court, which constitutes a unified tribunal with plenary jurisdiction over all offenses—ordinance violations, misdemeanors, and felonies. The result may be seen in Table 5.

These figures become more impressive in the light of the "crime wave" in other cities. Credit for the betterment undoubtedly belongs largely to an increase in the police force and better methods of administering that department. Nevertheless, the Detroit police department, in its bulletin for March, 1921, makes the following significant acknowledgment:

"Any statement of the improved crime condition of the city of Detroit should take into account the work of the Municipal Court."

¹ Article IV, Sec. 4.

² *Lougee v. State*, 11 Ohio, 68.

³ See *Hurtado v. People*, 110 U. S., 516. Michigan never had a provision guaranteeing grand jury procedure.

**TABLE 5.—THE DETROIT COURT; POLICE RECORD OF FOUR MAJOR
CRIMES OF PROFESSIONAL NATURE**

	1921	Average preceding five years	1920	1919	1918	1917	1916
BREAKING AND ENTERING DWELL- INGS:							
January	38	126	64	131	143	95	199
February	42	110	78	130	155	77	109
BREAKING AND ENTERING BUSI- NESS PLACES:							
January	35	122	99	114	162	124	110
February	46	107	99	81	173	96	83
ROBBERY:							
January	53	77	112	62	83	85	45
February	35	66	98	53	99	50	30
LARCENY FROM PERSON:							
January	37	52	46	59	51	44	58
February	19	51	39	42	45	77	53

Table 5 deals with four selected crimes for two months. The direct influence of the new unified court on the crime situation may be seen in Table 6, based on the record of all crimes for twelve months.

The increased number of misdemeanor complaints, arrests, and police

TABLE 6.—RESULTS OF UNIFIED CRIMINAL COURT IN DETROIT

	For the year ending April, 1920	April, 1921
FELONIES:		
Complaints	13,195	13,795
Arrests	7,491	11,115
Disposed of by police	4,383	7,246
Disposed of by court	3,108	3,869
Convicted by court	1,664, or 51 per cent.	2,648, or 70 per cent. ¹
MISDEMEANORS:		
Complaints	37,929	40,858
Arrests	32,415	35,315
Disposed of by police	13,394	19,465
Disposed of by court	19,021	15,850
Convicted by court	16,410, or 86 per cent.	14,222, or 90 per cent.

¹ These figures may be profitably compared with 4,262 felony cases disposed of by judicial process in Cuyahoga County in 1919, of which 37.1 per cent. were convicted on plea or after trial.

dispositions is explained by the increased activity of the department in handling gambling and other minor offenses.

A description of the operation of the unified criminal court is contained in the *Journal of the American Judicature Society*, April, 1921, and August, 1920 (Vol. IV, Nos. 6 and 2), and in the *Journal of Criminal Law and Criminology*, November, 1920 (Vol. XI, No. 3). The changes effected by the establishment of this court in making justice swifter and more certain are worth careful study.

CHAPTER IV

THE BENCH AND ITS BACKGROUND

IMPORTANCE OF THE BENCH

THE administration of justice is not a purely mechanical process. Its satisfactory conduct depends more than any industry on the human factor, because the administration of justice deals with the evaluation of human souls, and not with commodities or operations capable of measurement. Among these human factors the judges hold the place of unique responsibility. Their attitude at the trial often determines the result. They have it in their power to suspend sentences, to grant new trials, to eliminate delay, to reduce perjury, to assure better selection of jurors, and, theoretically at least, to pass on motions to "nolle" cases before them. It is obvious that strong judges, capable of inspiring respect and unafraid, may save even an archaic system from absolute failure.¹ No system of administering justice can rise higher than the quality of its bench, although it may go much lower. In order to understand the Cleveland situation, therefore, it is a necessary preliminary to understand the bench and the influences to which it may be subject.

PERSONNEL

Thumb-nail sketches are rarely likenesses and serve no good purpose if used merely to tag the individual subjects. As a group, however, such sketches may be useful in conveying a composite impression of the bench of Cleveland. The summaries given coincide with the common view of many members of the bar who otherwise differ widely in political and social outlook. The unanimity of opinion was surprising.

It should be remembered, however, that the bench as a whole is rated much lower than the individuals composing it. The picture of the judges would not be complete without the cheap, tawdry background which robs the subjects of their dignity and subdues the individual's good points. It is with the nature of this background that this chapter is chiefly concerned.

¹ This is true to some extent in Massachusetts.

The Common Pleas bench, as it was in April, 1921, is commonly characterized as follows:

In respect of legal ability it consists of two judges who, by reason of long experience on the bench, have acquired a wide knowledge of the law and practice; five judges of fair native ability, some of whom need experience to become good judges; two judges of mediocre ability; one judge not tried out sufficiently to afford a basis for judging legal qualifications; one judge of practically no juristic qualifications, and one whose unusual legal gifts make his presence on the bench a decided asset. In respect of faithfulness to duties, the list includes one judge who is notoriously unpunctual, several others designated as somewhat "lazy," and one who is occasionally guilty of gross neglect of his duties. Two judges possess considerable dignity of character, but others are characterized as "playing politics," "weak before popular clamor," "publicity getters," etc. One judge is remarkable for social-mindedness, which makes him fertile in constructive ideas, but sentimental in dealing with criminals. The personal habits of all but one of the judges seem to be above serious criticism.

As a group, the Common Pleas bench would probably compare favorably with county courts in other metropolitan jurisdictions. Criticism largely centers on its want of fine traditions,¹ absence of dignity, and lack of independence in thought and action. These qualities will be considered later.

The Municipal Court bench is characterized as follows:

In respect of legal ability the court contains four judges who might be said to measure up to the requirements of the office—one by reason of long experience on the bench; another because of previous experience as a justice of the peace; a third for his long experience at the bar and his previous official connection with the court; and a fourth by reason of

¹ A bench with high traditions would probably not have instituted, or at least not approved of the conduct of, the suit of State ex rel. Powell v. Zangerle, a petition in mandamus brought by the judges to compel the payment of increased salaries to themselves, as voted by the legislature. The constitutional question involved in the increase of salaries during term of office was a delicate one, yet in this suit a favorable decision by a judge of the same court in another county was accepted as final. The counsel for the judges drew the demurrer for the defendant, and no appeal was taken from the decision. Grave doubt has subsequently been thrown on this decision by the State ex rel. Metcalfe v. Donahey, a Supreme Court opinion holding that the increase may not be paid to Court of Appeals judges during the same term of office. It is irrelevant that the judges ought to be paid larger salaries. Most detrimental to the dignity of the bench was the patronizing attitude of the bar that it was glad to see the judges get more money, constitutionally or not.

years of private practice in a representative Cleveland firm. Two of the others are credited with fair ability, three are mediocre, and one apparently has no qualifications worth mentioning. The list includes two judges characterized as "playing politics," and two others designated as "gallery players."

On the whole, the personnel of the municipal bench is inferior in quality and ineffectual in character. A close observer of the Cleveland courts for years states that the present Municipal Court judges are not much superior to the old justices of the peace, and that whatever increased dignity they appear to possess arises entirely from the improved physical setting.

It is the almost universal belief among men whose opinion may be valued that the Municipal Court judges are irreproachable in respect of being influenced by money considerations. The survey did not attempt to follow up such vague and isolated charges as were brought to its attention, for two reasons: In the first place, actual corruption is impossible to prove without the power to compel testimony. Moreover, it is not indicative of the real trouble, since an occasional dishonest judge cannot make a venal bench, nor is an incorruptible bench enough to assure a proper administration of justice.

RECENT CHANGES IN THE ELECTION LAWS

In considering the present personnel of the bench, especially in the Common Pleas Court, a brief summary of recent changes in the mode of nominating and electing judges becomes important.

For many years prior to 1908 there had been little change in the law pertaining to nomination and election of judges. 88 Ohio Laws 455, Sec. 12 (1891), had provided two methods of nomination—first, by caucus or convention, primary election, or certification of the executive committee of an established political party, and second, by petition signed by a certain number or percentage of the voters. In 97 O. L. 226 (1904) a change in detail was made in the provision as to nomination by petition. The prevailing method of nomination was by party convention, the petition method being rarely used.

99 O. L. 217, Sec. 12 (1908), provided for nomination by direct vote unless the county controlling committee desired a nominating convention, in which case the delegates were to be elected at the primary. Nomination by petition was not disturbed. As a matter of fact, nomination by convention still persisted, and nomination by petition remained the unsuccessful recourse of the "independents."

Until 1911 election of judges was by party ballot, but 102 O. L. 5, Sec.

2, known as the "Non-Partisan Judiciary Act," provided that there should be no designation as to party upon the election ballot. This provision is in effect today.

In 1912 the new constitution provided in Article V, Sec. 7, that all nominations "shall be by direct primary elections or petition as provided by law."

In 1913 the "Direct Primary Law" was passed (103 O. L. 476), wiping out the nominating convention, and providing for nomination by direct primary, nomination papers to be signed by 2 per cent. of the voters. 106 O. L. 542 (1914) eliminated the necessity of having voters sign such nomination papers for the primaries, and this constitutes the law today (General Code, Sec. 4969). Nomination by petition outside of the primary is retained (G. C., Sec. 4999), and is now used to a considerable extent.

If it is possible to draw any comparisons between judges of the Common Pleas bench produced under the older system and newer modes of selection, it is suggested that the line be drawn between the election of 1910 and that of 1912. The former election may be said to mark the end of the period of partisan judiciary and convention nomination, and the latter to begin the present era of wide-open elections and direct nominations.

The Municipal Court had its beginning at the time of experimentation with nominating and election machinery. 101 O. L. 364 (1910) provided for nomination by direct vote, following the form of 99 O. L. 217, Sec. 12, for other judges and for election in the same manner as provided for other municipal officers. 102 O. L. 155, Sec. 5 (1911), is similar as to nomination, but the provision as to election is eliminated, probably to bring the judges under the general law for the election of judicial officers passed the same year, 102 O. L. 5, Sec. 1-6. In 1914, 106 O. L. 274 (now G. C., 1579-5), provided that judges of the Municipal Court should be nominated as other municipal officers,—by petition only, Cleveland Charter, Sec. 3, 1913,—and elected as other judicial officers, in non-partisan election. Practically, the existence of the Municipal Court has been entirely in the period of direct primary and non-partisan elections.

APPARENT EFFECTS OF THESE CHANGES

For the purpose of summarizing recent history of the personnel of the bench, two diagrams are printed. Diagram 5 shows Common Pleas judges who have served from 1900 to the present date, with political affiliation, mode of first coming to the bench, date of election or appointment, age on admission to the bar, and subsequent legal experience.

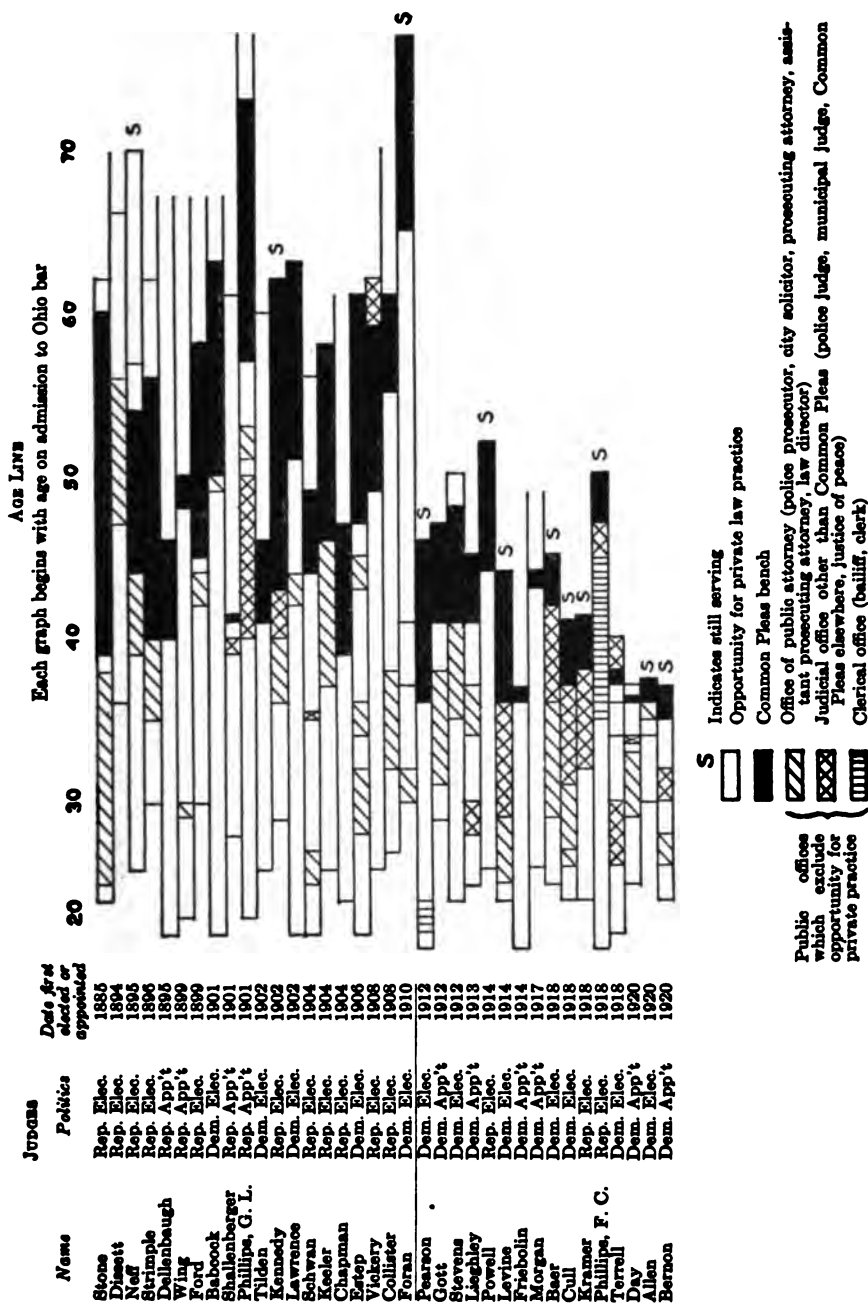


Diagram 5.—The legal career of judges of the Common Pleas Court, 1885 to the present, with respect to their ages and their public and private services

Diagram 6 shows the same facts for the Municipal Court judges since the organization of that court. Many of the judges set down as appointed were subsequently elected.¹

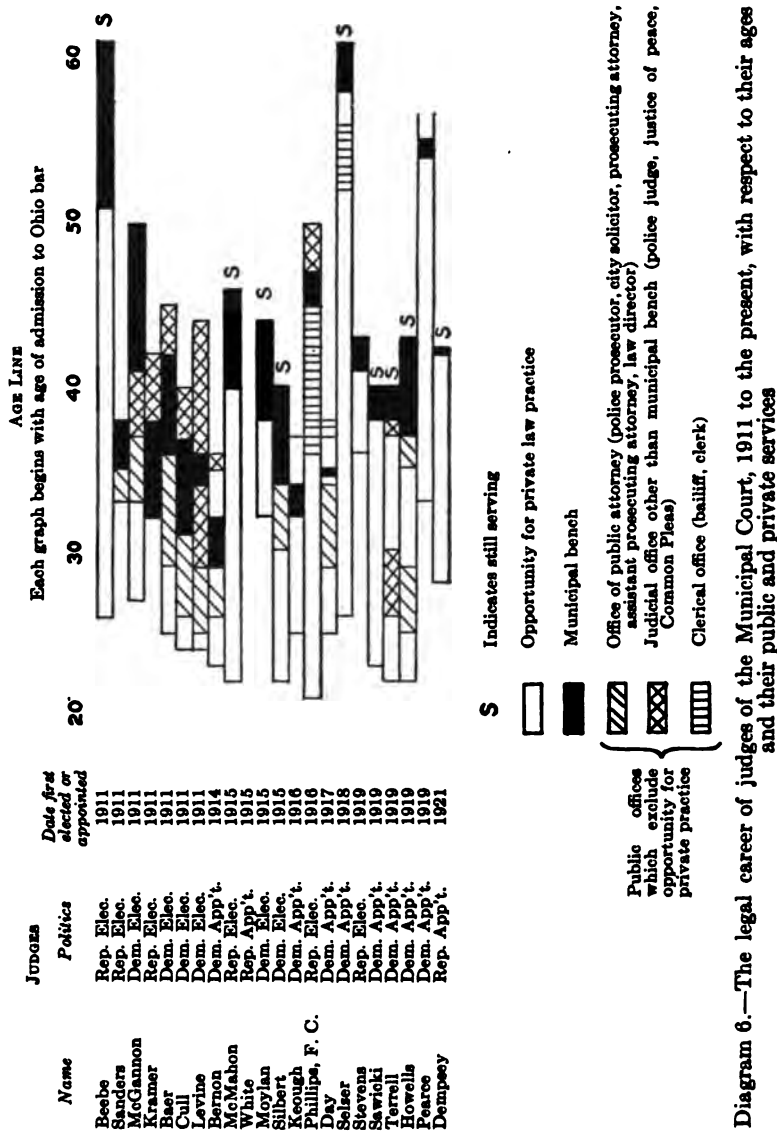


Diagram 6.—The legal career of judges of the Municipal Court, 1911 to the present, with respect to their ages and their public and private services

¹ The charts may not be precise in every detail, but should be sufficiently accurate for general deductions.

Turning to Diagram 5, it is at once apparent that with the election of 1912 a much younger group of men began to appear on the bench. A ruler laid across the chart along the line of 40 years of age shows only two judges beginning their service under that age before 1912, and eight judges after 1912. Similarly a line drawn across 45 years of age shows only nine out of 20 before 1912 and 15 out of 16 after that date. A comparison is given in Table 7.

TABLE 7.—AGE ON ELECTION OR APPOINTMENT,
COMMON PLEAS COURT

Age	Judges on bench, 1900-1910	New judges, 1912-1921
35-39	2	9
40-44	7	6
45-49	5	1
50-54	2	0
55-59	3	0
60-64	0	0
65-70	1	0

Another noticeable difference is the quality of the experience brought to the bench by the judges before 1912 compared with the later group. The shaded areas in Diagram 5 represent experience which necessarily or largely excluded private practice, and conversely, the white areas represent opportunity for such practice. Table 8 summarizes the

TABLE 8.—OPPORTUNITY FOR PRIVATE PRACTICE,
COMMON PLEAS COURT

Years of opportunity for private practice	Judges on bench, 1900-1910	New judges, 1912-1921
0-4	1	3
5-9	3	5
10-14	5	4
15-19	4	4
20-24	4	0
25-29	2	0
30-34	1	0

amount of opportunity for private practice. Before 1912 most of the judges were apparently well seasoned in the private practice of the law, whereas after that date the majority had been trained chiefly in the office of inferior judge or prosecutor. Since the difficulties of trial and

consequences of decisions and rulings can be best appreciated by the man who has "been through the mill," it is not surprising that the Cleveland bar displays no little impatience toward the bench. Table 9 indicates the comparative inexperience of the newer judges.

TABLE 9.—TOTAL YEARS OF EXPERIENCE, COMMON PLEAS COURT

Years	Judges on bench, 1900-1910	New judges, 1912-1921
0-4	0	0
5-9	0	1
10-14	3	6
15-19	7	8
20-24	2	0
25-29	3	1
30-34	1	0
35-40	1	0

The Municipal Court has been in existence for nine years only, under practically one method of selecting its judges, so that Diagram 6 does not contain much material upon which conclusions may be based. Many members of the bar, however, are of the opinion that there has been progressive deterioration in the quality of judges first reaching that bench by the election method.

The present personnel of the Common Pleas bench includes seven Democrats and five Republicans; the Municipal Court, six Democrats and four Republicans. Since Diagrams 5 and 6 contain only the dates of *first* elections and appointments, they are not well adapted for judging whether a non-partisan bench has been secured. Since 1911 the elections of judges have resulted as follows:

Municipal Court			Common Pleas Court		
Date	Parties	Mayoralty	Date	Parties	Governor
1911	4 Dem., 3 Rep.	Democrat	1912	5 Dem., 0 Rep.	Democrat
1913	1 Dem., 2 Rep.	Democrat	1914	2 Dem., 4 Rep.	Republican
1915	5 Dem., 2 Rep.	Republican	1916	2 Dem., 1 Rep.	Democrat
1917	2 Dem., 2 Rep.	Republican	1918	4 Dem., 2 Rep.	Democrat
1919	6 Dem., 1 Rep.	Republican	1920	4 Dem., 2 Rep.	Republican

The Municipal Court has probably been a true non-partisan institution from the beginning. The predominance of Democrats elected to this

bench is due somewhat to the vacancies which occurred during Governor Cox's two terms as governor. There were nine vacancies before 1921, eight of which were filled by Governor Cox with Democrats, some of whom replaced several Republicans. The strong tendency on the part of the voters to reelect men already on the Municipal bench secured the election for most of these appointees.

Elections to the Common Pleas bench have shown a growing tendency to become non-partisan, despite the fact that there is now somewhat of a reaction toward party sponsorship.¹

THE UNDERLYING CAUSE FOR DISSATISFACTION

The changes in election machinery were in large part the result of the progressive wave which swept the country in the first decade of the century.² They represent a revulsion against intolerable political conditions then flourishing,³ and it was impossible to foresee all the effects of the steps when proposed by the new leadership. Cleveland has now had ten years' experience of the wide-open method of selection, and although few would care to return to the bossed party conventions, it is safe to say there is scarcely a man in Cleveland able to weigh the qualifications for the bench who does not deplore present tendencies and fear them.

It is not altogether a question of comparing the intrinsic ability and integrity of the new judges with the old. Such a comparison might not be wholly unfavorable to some of the younger judges. Nor does the reason lie entirely in the fact that the judges are coming to the bench younger and less experienced than formerly, and that a few are markedly unsuited for judicial careers. These are symptomatic conditions only. Most serious is the present cheapening of the judicial office, so that neither the bar, the press, nor the judicial incumbents themselves any longer respect it. Young lawyers who would have viewed the bench

¹ See issue of the *Cleveland Press*, October 30, 1920, for an advertisement by the Republican Executive Committee consisting of a "slate" of judges captioned "Republican Judicial Candidates." The *Press* has been one of the foremost proponents of the non-partisan election of judges.

² See Mr. Tannehill's appeal to the progressive and Roosevelt vote in introducing the direct primary amendment at the Constitutional Convention, Ohio C. C., 1912, *Proceedings and Debates*, p. 1239.

³ "The chief cause of the frequent failure of representative government lies in the corrupt, boss-controlled, drunken, debauched, and often hysterical nominating convention," says the sponsor for the direct primary provision, *ibid.*, p. 1239.

with reverence formerly, now give voice to their disrespect, and retired and even sitting judges are openly cynical.

The situation is summed up in the universal comment that the judges are generally above the suspicion of taking direct money bribes, but find it difficult to forget the coming election.¹ To judges who have had little or no private practice before beginning their public careers, the matter of insuring reelection is especially urgent.

Here again the trouble lies in attempting to adapt the democracy of the town meeting to a great cosmopolitan population. Direct nomination and non-partisan election of judges produce fairly satisfactory results in a small community, where everyone knows the nominees, and fitness for office is a matter of common appraisal. Judges from country districts are frequently sent to the Cuyahoga Common Pleas Court to help handle the crowded docket in that court, and Cleveland lawyers, on the whole, prefer these outside judges to the members of the local bench. Superior legal ability generally and greater disinterestedness are conceded to these country judges. In a community of nearly a million population, however, containing many voters who cannot even read English, it is not possible for more than a small proportion of the voters to know anything about the fitness for office of the numerous candidates for judicial office. This small group could carry the city by aggressive leadership,² but so far there has been no such leadership. The result has been that a judge facing reelection has had to insure his survival through one or several of the following ways: catering to petty bosses who control votes; patronizing certain influential groups—racial, religious, or industrial; general publicity in the newspapers or otherwise. Whichever way the premium is paid, the judge and his high office are degraded.

In considering the effects of these influences, the words of judges and prominent lawyers are freely quoted in this report in order to convey as much as possible of the local feeling. Even if some of the statements seem extreme, it should be remembered that the fact responsible men speak in this way of the bench is itself a factor of importance. The observations proceed from men full of reverence for the bench as an institution and a desire to see it restored to its historic dignity.

¹ This difficulty is not experienced by judges alone. The County Treasurer's office is placarded with this amusing apology: "The County Treasurer is not responsible for the increase in your taxes. The increase was carried by vote of the people at the last election."

² The recent victory of the Coalition Judicial ticket in Chicago is an example.

IMPORTANCE OF THE PETTY POLITICIAN

Catering to politicians is probably the least common mode of assuring reelection for Common Pleas judges, and not the most desirable for the Municipal judges. It is not only distasteful, but dangerous. Undoubtedly, under the older methods of selection, there were forces which impelled a judge to heed the wishes of the great chieftains of the party, but it must have been less subversive of morale to deal with chiefs, who interfered rarely, than to listen continually to the unvoiced threats of petty vote controllers specializing in criminal law. When one considers that most professional or habitual criminals engage these political lawyers to defend them, the unwholesomeness of the condition is clear.

Moreover, it is often difficult to say where influence ends and "good-fellowism" begins.¹ Both judges and prosecutors have often risen through politics, and it would not be surprising to find that they have not forgotten some of their old associates. The effectiveness of the political criminal lawyer has already been discussed² in a general consideration of the system, and reference may be had to Tables 3 and 4.

No statistics on this subject can be secured for the Municipal Court, but prevalent opinion is that "influence" and "good fellowism" flourish still more successfully in that court. This is to be expected where great haste and inadequate record keeping afford a screen behind which operations may be conducted.³ It is not uncommon for lawyers to call judges on the telephone to talk about their cases. Usually publicity at the trial will thwart any tendency to favoritism by the court. In one

¹ Even in civil cases, where the alertness of opposing counsel minimizes the danger of favoritism, complaints are not uncommon. "Before some of the judges," remarks one lawyer, "my first worry is to wonder what 'drag' opposing counsel has with the court."

² See Chapter III.

³ An ex-Municipal Court judge states that when asked to defend his former office boy, he advised him to see the "boes" of his ward and not to waste time with a mere lawyer. An attorney relates that a professional criminal asked him to secure a continuance until he could get his councilman. The papers in this case were subsequently withdrawn. One of the leading firms in the city advised a client in an automobile manslaughter case to take his medicine "because the evidence against him was conclusive." The defendant retained a councilman-lawyer, however, and after several continuances was discharged.

Care should be taken not to make a blanket charge that all judges cater to politicians. Specific instances could be cited where judges have courageously stood out against politics in their court.

case on a charge of rape the defendant, a politician of low order, had a reputation for slipping out of "scrapes" through influence. On the day of the preliminary hearing the court-room was filled with representatives of various women's societies, and the man was bound over. The ways of "influence" are so devious, however, that not even full publicity will avail where there is a determination to protect. "Tim" Raleigh openly and decently maintained an establishment for the placing of election, baseball, and racing bets. It was operated, as a Common Pleas judge had expressed it, "not with the connivance, but with the acquiescence, of everyone," and apparently was regarded as a public service institution. Owing to the vigorous attacks of the *Cleveland Press*, arrests were made and a trial forced. It is reasonable to suppose that no one in authority sincerely desired to convict Raleigh, who had obtained tacit, if not express, consent to the conduct of his business. The *Press* had tried Raleigh in its columns and convicted him, even to the extent of publishing names of men who had placed bets. Nevertheless Raleigh was acquitted, under such circumstances that the judge, jury, prosecutor, and police could each lay reasonable claim to having acted conscientiously and yet point the finger of suspicion at the other.¹

¹ Warrants against Raleigh were sworn on November 11, 1920, on which date Raleigh was arraigned and pleaded not guilty. The case was continued to November 24, then to December 8, then to December 16, when a jury was demanded. The case was then continued to February 7, 1921, and then to March 7.

There were two charges against Raleigh, one under Sec. 13060, relating to selling chances on a pool on the result of an election, and the other under Sec. 13062, for keeping a place where books and slips for wagers were kept and exhibited. No charge was brought under Sec. 13054, for keeping a room to be used for gambling, probably because, under an old decision by Fiedler, Police Judge, gambling in this section was construed to mean a game for stakes. (*State v. Lark*, 3 O. N. P. 155.)

The State proceeded to trial under Sec. 13062. Judge Silbert overruled the defendant's demurrer that no crime was charged under this section of the code. The State introduced as evidence some racing charts which anyone could purchase in Cleveland, several pads of blank forms, available for recording wagers, a record book in code which was not deciphered, and some slips of paper bearing notations of what might be wagers, chiefly on the results of election, but partly on baseball and horse-races. There was no evidence that a witness had placed a wager or had seen a wager placed.

At the close of the State's case the defendant's attorney moved for a directed verdict and was overruled. Judge Silbert then instructed the jury in substance that the evidence bearing on election bets should not be considered because an election was not "a trial or contest of skill or endurance of man or beast" according to the statute. It cannot be said that the judge was unreasonable in his construction of the statute. The jury returned a verdict of not guilty, which it might well have done in view of the charge and the evidence. The prosecutor then "nolled" the

THE INFLUENCE OF GROUPS

More important in its effect on the bench than the tendency to respond occasionally to political influence is the bid for support which many judges make to different groups and factions in the city. This is almost entirely a new influence upon the judiciary. "In order properly to play the game," observes one of the more sophisticated judges, "it is necessary for a judge to attend weddings, funerals, christenings, banquets, barbecues, dances, clam-bakes, holiday celebrations, dedications of buildings, receptions, opening nights, first showings of films, prize-fights, bowling matches, lodge entertainments, church festivals, and every conceivable function given by any group, national, social, or religious." Several of the judges have a reputation for "handshaking" nearly every night in the week. One judge of fine, simple nature is reported to have been inveigled into making a speech on the educational and moral value of motion pictures at the first showing of a particularly salacious film. The judge, of course, had not seen the picture. Another judge is said to have refereed a prize-fight. In the past the saloon, as the neighborhood center, has been assiduously courted.¹ Three judges of unquestioned character campaigned by visiting the saloons in the different foreign sections of the city, and were presented to long lines of foreign-speaking voters with the aid of an interpreter. No drinks were bought, not a cent was spent, only handshakes were exchanged, yet this was deemed essential campaigning. All three were reelected.

1. Racial and Religious Appeal

One of the most disturbing features is the intensifying of racial and religious appeals. A man is elected or appointed because he is a Pole, a Jew, an Irishman, a Mason, a Protestant, and it is sometimes difficult for a committee to reject a candidate without being charged with discrimination. On the other hand, an even more vicious tendency has

charge under Sec. 13060, which he was justified in doing if, as stated by him, he had no more evidence of selling chances than that already introduced. The police did not admit having any more evidence than that already offered. If all of the parties acted in good faith and told the truth, the case is simply one of a failure by the police to secure adequate evidence.

¹ In a campaign speech addressed to an audience containing many saloon-keepers a judge is quoted as saying the following: "I am a candidate for an office that is important, especially to men like you. You might have a little unfortunate trouble and get into the police court—when you do, you want a man on the bench who is your friend."

begun to appear—the formation of organizations with the avowed or unavowed purpose of “knifing” every candidate who is not of a particular religion, nationality, or color. It is estimated that one such organization last fall, through the expedient of issuing thousands of marked ballots at churches and other places, succeeded in swaying 50,000 votes among the regular nominees. The marked ballot carried nothing to indicate the sectarian nature of the organization, which bore a title similar to that of the Civic League, an impartial organization, and it is not to be supposed that so many voters knew of the dominant motive behind the marked recommendations.

2. Labor Organizations

From time to time, as at present, fierce industrial controversies rage in Cleveland, and there, as elsewhere in the United States, in contrast with England, courts are drawn into the economic struggle. Naturally, therefore, each group is alert to bring its pressure—be it voting strength or dominant public sentiment—to bear upon the courts and to be concentratedly watchful of the group interests. Another manifestation, therefore, of the use of group power is the active participation of certain of the labor organizations in the election of judges. Like other groups, these organizations have often not taken a broad view of a judge’s fairness and ability. “The unions have lost faith in the courts,” states one of their most respected leaders; “they believe the man who has the influence gets by.” So believing, they tend to act on their beliefs and fears—fears not wholly unjustified in past American experience. If a judge renders a decision, however conscientiously made, which is believed to be adverse to the interests of a labor organization, he is apt to be marked for the slaughter. Even a passing remark may be taken to stamp a judge as anti-union and be used to defeat him.¹ Naturally,

¹ Judge R. M. Morgan rendered a decision in *Taylor and Boggis Foundry Company v. Iron Molders’ Union*, limiting the extent of picketing during a strike. The union construed this decision as hostile, and fought him at the primary as “an enemy of the union.” Although Morgan had been making an able judge, he was badly defeated. Even the party organization did not support him. The union claimed the credit of assisting in his defeat.

Judge F. B. Gott was opposed for reelection in 1918 because “one of our members was called before Judge Gott about a year ago and he asked this brother what he done with his money, and he told him he was a member of the — Union. The judge in turn told him he had better drop the union, so he also must have a grudge against labor unions.” The “member” referred to had failed to comply with an order of the court as to an allowance for his wife and children, giving as an

the converse is also true, that unions will support those "who will give us a square deal when we get into trouble." It is not surprising that this condition produces a judge who flourishes his union card on the bench, and in a suit *quantum meruit* for work done, campaigns for reelection by observing that "a non-union man isn't entitled to receive the union rate of wages." A former judge relates that when he was on the bench two well-known union leaders were introduced to him by his clerk—"no particular business, just to let me know they were on the map."

This situation naturally tends to undermine the character of the judiciary.

There are some critics, notably attorneys for large employers, who would explain all of Cleveland's troubles in administering justice with the observation that "Labor is on top." Little good can come from taking such a simple partisan view. The influence of organized labor is only one of many symptoms of an unhealthy system. If organized labor disappeared completely, the system would be just as unsound and unsatisfactory. The country has had the converse experience with judges imbued wholly with the viewpoint of big business and wants no more of it. The folly of exposing a judiciary to every wind that blows, and then blaming a particular wind, is apparent.

3. Bar Association and the Civic League

The two organizations to which the voting public would naturally turn for leadership in the selection of judges are the Bar Association and the Civic League. The Bar Association contains the men who are best able to weigh the attainments of a judge and who have intimate personal knowledge of all the candidates. The Civic League exists largely for the purpose of furnishing the people of Cleveland with unbiased estimates of the qualifications of public officers. Its wide membership places it above suspicion of ulterior motives. Yet neither the Bar Association nor the Civic League has been wholeheartedly accepted by the people of Cleveland as a guide. That other influences have been at times more potent may be seen in the list of judges who have failed of reelection since 1912. Judges who have done well in office and become seasoned should, if possible, be returned to office, if the bench is to de-

excuse that part of his wages went to pay union dues. The judge told him his legal and moral obligation to his family came ahead of the union. In 1912 Judge Gott had led the ticket; in 1918 he was defeated, running fifth in a field of eight candidates.

velop fine traditions and attract men who seek the bench as a life-work and not as a political stepping-stone. Moreover, it is an expensive work to train young and inexperienced men, and the training should not be wasted.

For the most part, in the following list only indorsement of the Bar Association are given, because they were substantially the same as those of the Civic League.

In 1912 Judges Chapman and Ford, two of the most able Common Pleas judges in recent years, were defeated. They were the first and second choice respectively of the straw vote of the Bar Association. In the same year former Judges Keeler, Schwan, and Strimple were defeated, but in these instances the vote of the electorate coincided with the vote of the Bar Association. Those retained in office were Judges Phillips and Babcock, the third and sixth choices of the Bar Association, and those newly elected, Judges Gott, F. E. Stevens, and Pearson, the fifth, eighth, and ninth choices.

In 1914 Judge Collister, the first choice of the Bar Association, failed of reelection, and Judge Ford, again the second choice, although he had been off the bench for two years, was defeated. Judge Friebohn, who had received an eight to five indorsement over his opponent, failed of reelection. The successful candidates who ran against these men were Judges Vickery and Neff, third and fourth choices respectively, Judge Kennedy, and newly elected Judges Levine and Powell.

In 1916 three judges were candidates for reelection and all were elected.

In 1918 Judges Gott and Stevens failed of reelection. Although the Bar Association vote for that year is not available, these men are concededly two of the ablest on the bench. Judge Morgan, a hard-working, conscientious judge of considerable ability, failed at the primaries. The successful candidates who ran against Judges Gott and Stevens were Judge Pearson, who was reelected, and Judges F. C. Phillips, Baer, and Kramer, who were newly elected.

In 1920 three judges whose election was contested were returned to office, all of them having been indorsed by the Bar Association in its straw vote. For the new judge the Association preferred Judge George S. Addams, Judge of Insolvency and Juvenile Court, to Judge Florence Allen, who was the sixth choice of the Bar Association, and who led the ticket. The Civic League strongly indorsed Judge Allen.

In the history of the Municipal Court only one judge has failed to be retained in office, and this one was originally appointed. In the first election in 1911 the Bar Association, which had urged the establishment

of the new court, made an active campaign to elect its choice of the judges to the first bench and succeeded. The vote of the Association for 1913 is not available. The three candidates recommended by the Civic League were elected. In 1915 the choices of the association for Chief Justice and for the three six-year terms were elected, but all three of its selections for the four-year terms were defeated.

The vote of the Bar Association for 1917 cannot be located, but three of the Civic League's preferences were elected and one defeated.

In 1919 five of the choices of the Bar Association were elected and two defeated.

In this connection it might be interesting to glance at the list of judges who have resigned from the bench, all of whom were indorsed by the Association and the Civic League.

Before 1912 resignations were infrequent, but during the eight succeeding years the following have resigned¹ from the Municipal bench: Judges Sanders, Bernon, Keough; and from the Common Pleas bench: Judges G. L. Phillips, F. E. Stevens, and Estep. Judge Sanders was subsequently appointed street railway commissioner. Judge Bernon was appointed Common Pleas judge; Judges Phillips and Estep resigned because of age and ill health. The remainder have returned to the private practice of law. It may be said that all of these men were above average ability for their respective benches.

One reason for the partial ineffectiveness of the Bar Association and the Civic League is the fact that, as a general practice, neither organization makes a fight for its recommendations, except by publishing their indorsements in the newspapers. When a real effort is made to elect its choices, as at the launching of the Municipal Court, the entire list may be elected. Few people are influenced merely by reading a list of recommendations, and many voters live beyond the city limits. Meanwhile the influence of the ward politician, the appeal to race, religion, class solidarity, and prejudice, have won the mass of the voters. Moreover, the two associations begin their efforts *after* the primary, so that often they have little or no enthusiasm for their own indorsements.² These bodies have a splendid opportunity for intelligent leadership, and since the advent of woman suffrage, a new and powerful source of support.

There has been another reason for the failure of the Bar Association to lead. For a time it was like most other bar associations in the coun-

¹ Exclusive of resignations after election to a higher court.

² "There is no such thing as Bar Association candidates," observes a prominent lawyer, "only those whom they prefer—the lesser of two evils."

try, functioning chiefly to eulogize the dead. It has bestirred itself occasionally when vacancies occurred on the bench, and through committees has conferred with judges regarding changes in rules and practice. It has made possible such reforms, as the establishment of the Municipal Court, certainly a great improvement over the justices of the peace. It has maintained an organization for dealing with grievances against individual attorneys, which has probably functioned as well as most grievance committees. Until recently it had never set itself the definite task, however, of supplying educational advantages to its members, or of lifting the standard of admission to the bar, or of cleansing the profession of pirates and evil practices, or of improving the personnel of the bench. For these reasons the Association was not highly regarded even by its own members, or recognized as a public-spirited organization generally.

This situation is changing at the present time. Under recent leadership, notably that of its present head, John J. Sullivan, and a professional secretary, A. V. Abernethy, the Cleveland Bar Association promises fruitful activity. It holds frequent meetings, addressed by experts on various phases of the law and practice, publishes monographs, maintains an energetic legislative committee, and takes a general lead in matters of chief concern to bench and bar. The vigorous efforts of its executive committee resulted in the prompt retirement of Chief Justice William H. McGannon, in the appointment of Judge John P. Dempsey to succeed him, and the naming of a special prosecutor to purge the city of the disgrace of the three Kagy murder trials. Prominent and busy members of the Association have given generously of their time to aid the Cleveland Foundation Survey. If the Association makes a permanent and dynamic tradition of its present energy and responsiveness toward ethical and public questions, it is certain to capture and hold the confidence of the voting public.¹

PUBLICITY

Editorially, newspaper support of candidates for the bench has in the main been wisely given. What effectiveness the recommendations of

¹ Some of the members do not yet share the outlook of the leaders. At the meetings on February 16 and 23, 1921, occurred debates over a motion to indorse a bill for the Statutory Organization of the Bar of Ohio. One of the chief grounds of opposition was that the bill contained by inference the admission that some lawyers needed disciplining. A Common Pleas judge who had won a reputation for public service, partly through his own fight against shysters and attendant parasites, opposed the motion on the ground that "lawyers were just as honest as other men."

The motion was lost, 59-49.

the Bar Association and the Civic League have had is due chiefly to the coöperation of the press. The gravest criticism that can be made of the increased editorial power of the newspapers in relation to the bench is that sometimes it comes perilously close to dictating important decisions, and that always the fear of it tends to weaken independence of mind.¹ In a community where the administration of justice may be interfered with by many unseen causes, however, newspaper vigilance has often been exerted in the interest of the public welfare.

1. Self-Advertisement

The real evil in the use of the power of the press lies not in its editorial policy, but in its news column, where the daily publication of a judge's name may lead the public to vote for a judge as naturally and unreasoningly as it asks for the most widely advertised brand of soap. Some publicity is, of course, not only justly earned by a judge, but highly desirable from the public viewpoint, as, for instance, when a judge inaugurates a reform, or hands down a decision on an important and unusual question, such publicity means public education. However, quantity of publicity is more telling than quality. The average voter soon forgets in what connection he has read a judge's name, and knows only that some names on the ballot look familiar and some strange. Then the law of "suggestion" makes him vote for the advertised name.

This kind of voting in Cleveland has produced some curious results. At least two candidates, hitherto unknown to the public and of no marked fitness for the bench, were elected to the Municipal Court because they bore the same names as two retired Common Pleas judges who had built up good will through many years of service. In one election a blacksmith carried Cuyahoga County as candidate for Chief Justice of the Supreme Court of Ohio because his name was similar to that of the well-known judge of the Probate Court. At the next succeeding election for the Supreme Court the same man ran third in a field of seven.

The continued advertisement of a judge's name—or the name of a prosecutor who would be judge—may take place without, and even

¹ The dilemma of the judges is clearly brought out in a story related by a court reporter of one of the local papers. A judge who had been ridiculed by this paper, in delivering an address, severely arraigned the press for attempting to influence the court and juries. The reporter walked in toward the close of the address and was discovered by the speaker. As soon as the talk was concluded, the judge rushed to the reporter and whispered, "For ——— sake, don't handle me too rough tomorrow."

contrary to, the wish of the editor.¹ The newspaper reporters who cover the courts naturally want copy. The judges, too, desire copy and the combination, unchecked, is bringing the bench into a disrepute which attaches alike to the conscientious judge and the guilty "juggler" on the bench.² The least judicial and most immoderate judges get their actions into the papers because "it's news," while strict and competent attention to judicial duties is too commonplace for mention. Several years ago a Municipal Court judge began to sentence traffic-law violators with such a heavy hand that he furnished copy to the reporters for weeks. A society woman receiving a workhouse sentence made "a story." In the fall this judge was a candidate for the Common Pleas bench, and although opposed by the press, led the field by a big majority, partly because of the advertisement he had received. A judge now on the Municipal Court bench started the same tactics in the winter of 1921, fining the liquor law violators—for the most part foreigners making "home brew"—unprecedented sums. The newspapers promptly responded with publicity. Many of the defendants were sent to the workhouse to work out fines ranging from \$500 to \$3,000 at 60 cents a day. These unfortunates were immediately dubbed "lifers," and a fresh run of publicity started, with photographs and interviews.³ The judge then injected new life into the news by calling publicly for criticism and suggestions. Evidently the comments he received were not wholly favorable, because he soon relaxed his campaign. As a matter of fact, by means of motions in mitigation, quietly allowed, this judge was not exacting greater penalties than his more moderate colleague in the next room, but of this the public was not aware.⁴ The man who paid his

¹ When the *Cleveland Press* sought to fix responsibility for the Raleigh farce, one of the principals remarked: "I don't care what they say about me so long as they keep on publishing my name."

² "The Jugglers" is the title of a novel caricaturing the administration of justice in Cleveland—by Ezra Brudno, 1920.

³ It is comforting to know that most of these workhouse commitments were quietly released—with little publicity, however. Out of 59 defendants committed by this judge in January, for failure to pay fines, by April 19, 23 had sentences suspended by the judge, 24 were paroled by the Parole Board, 7 paid the balance of their fine, and 1 died. The average time actually served was thirty-one days.

⁴ In January this judge's average fine (exclusive of workhouse and appealed cases) was, before mitigation, \$376.62; after mitigation, \$176.61. His colleague's average fine was \$299.12; after mitigation, \$180.17. Cases begun in January but sentenced after January averaged \$322.58 before mitigation, and \$122.58 after mitigation. The second judge for the same class of cases averaged \$269.23 before mitigation, and \$135.90 after mitigation.

huge fine without making a motion in mitigation was penalized for not having a lawyer who "knew the ropes." The judge justifies his conduct on the ground that he never intended the large fines to be paid; that they were simply warnings and had a wholesome deterrent effect.

2. Exploitation of the Police Court

The two judges cited are perhaps most extreme examples, but even without such campaigns the police court furnishes lime-light enough. To serve in the police court during election year is a political asset, and the schedule of the judges is apparently conveniently arranged so that all judges facing reelection are given the opportunity to serve on the criminal side during the preceding nine months. If necessary, the regular sitting of a judge not up for reelection is shifted to a colleague who is.

In November, 1913, the following Municipal Court judges were candidates to succeed themselves: Judges Beebe, Cull, and Sanders, and although we have no record of the regular assignments for this year, these three men served on the criminal division during most of the year.

In November, 1915, the following judges were candidates to succeed themselves: Judges Baer, Bernstein, Kramer, and McGannon, all of whom were assigned to the criminal division during this year. The one other judge who was assigned for a term did most of his service after the election.

In November, 1917, the following judges were candidates to succeed themselves: Judges Beebe, Cull, and Keough; all of them were assigned to the criminal division during this year. The only other judge who was assigned for a term apparently yielded a portion of his assignment to the others.

In November, 1919, the following judges were candidates to succeed themselves: Judges Moylan, Pearce, Howells, Terrell, Selzer, Silbert, and Sawicki, the first five of whom were regularly assigned to the criminal division. Judges Silbert and Sawicki, however, were worked in shortly before election—Judge Silbert for more than three months and Judge Sawicki for one month.

The election for Common Pleas judges is held in the even years, and here again a relationship exists between service on the criminal division of the Municipal Court and the judge's candidacy for the Common Pleas bench the same year.

In 1914 Judges Levine and Sanders were candidates for the Common Pleas Court, and during the same year both served on the Criminal Division. In 1916 no Municipal Court judges were candidates. In

1918 Judges Baer, Kramer, F. C. Phillips, and Cull were candidates for the Common Pleas bench, and all served in the criminal division, the first three by assignment, and the last being given a month by courtesy or exchange. In 1920 Judge Beebe was a candidate, and although not regularly assigned to criminal work, served over five months in that division.

The success of this kind of publicity is seen in the fact that out of a total of nine new Common Pleas judges elected since 1912, six are former Municipal Court judges, and a seventh is a former assistant county prosecutor. Only two Municipal Court judges have been defeated for the Common Pleas bench.

Of the six former Municipal Court judges, four started their careers as police prosecutors. Out of 18 Municipal Court judges elected since its organization, eight began in the police or county prosecutor's office. This tendency has become less evident of late, however, since out of nine Municipal Court judges now serving, only two began as police prosecutors. It is difficult to say what has caused this shift, unless it be a change in the quality of police prosecutors, who now seem to be moving into the county prosecutor's office or becoming police court lawyers.¹ The injury to the prestige and self-respect of the bench through the conscious exploitation of the criminal branch needs no comment.

There is apparently no established practice in the Common Pleas Court of using the criminal division for publicity purposes in election year, although it is undoubtedly so used on occasions. Sometimes a candidate for reelection will take two terms as presiding judge of the criminal branch before election, as Judge Ford in 1912, Judge Lieghley in 1914, Judge Powell in 1916, and Judge Kennedy in 1920. The temptation and perhaps even the necessity of bench publicity are unfortunately present in the Common Pleas Court as in the Municipal Court.²

¹ The quality of police prosecutors is part of the study of that office, rather than of the bench. Newton D. Baker, the first city solicitor to appoint police prosecutors, inaugurated a policy of appointing "youngsters with ideals fresh out of the law school." The ability of his keen juniors to improve their opportunities soon landed five out of six on the Common Pleas bench, with scarcely any of the seasoning which comes from private practice.

² A judge who would not be classed as a self-advertiser was hearing an important injunction suit which lasted several days. After court had adjourned for the day, the case still pending, a reporter stopped the judge as he was leaving the bench with, "Just give me the high points, Judge." Warily, but patiently, the judge detailed the day's progress for the reporter. The impropriety of a judge reviewing for the press a case pending in his own court apparently shocked no one.

3. Character of the News

As long as newspapers print as news every extreme utterance or irrelevant whimsy, they will fail to educate the public to a relevant appraisal of the bench. It is easy to understand why a newspaper which prints the following about a judge cannot defeat him at the polls: "Municipal Judge — ate candy as he listened to testimony Friday. 'It keeps one from getting nervous,' the Judge says."¹

Another form of publicity which the present mode of selection has brought into prominence is the advertisement which must be bought. Where formerly judges were timid about such a small matter as distributing cards, there is no hesitancy today about elaborately conceived advertisements. Pictures showing a judge listening kindly to the whispers of a poor litigant or being appraised by an appreciative public are some of the forms of campaign publicity.

4. Campaign Funds

There is one aspect of purchased publicity which ought to be stopped immediately, namely, the solicitation of campaign funds, especially among lawyers. So far the reports of such funds concern only a few judges, but unless curbed, other judges will be compelled to permit collections in their behalf. It would be difficult to conceive a more degenerating influence than the giving of campaign funds by lawyers in behalf of a judge before whom they expect to practise.

RECOMMENDATIONS

From the foregoing it will be seen that the wide-open elective system in Cleveland has up to the present time developed no predominant *de facto* method of appointment. The community has been unable to avoid the chaos regarded as an impossible result by the American Judicature Society.² Its bench, therefore, reflects the many influences at work upon it. Rarely does a judge represent the purposeful, discriminating choice of the community.

Only in the filling of vacancies has a real appointive power asserted itself. Unfortunately, the local executive committee of the political

¹ A judge known for his efforts along constructive lines caught a former chief of police "cribbing" someone else's speech on a public occasion. The editor of one of the papers which made a sensation of the exposure congratulated the judge with the remark, "This is the best thing you've ever done." "How about my part in ridding Cleveland of justices of the peace?" queried the judge. "Oh, that was all right," replied the editor, "but this is the biggest yet!"

² *Bulletin IV-A*, American Judicature Society, p. 9, 1915, Chicago.

parties has usually seized these opportunities, the Bar Association not being, as a rule, aggressive.

1. Appointed and Elected Judges

Owing to the frequency of vacancies caused by resignation and death, it is possible to draw a comparison between men appointed by the Governor to fill unexpired terms and those who became judges for the first time through election. Of course, most of those appointed were subsequently elected, but the comparison is relevant only to the modes of selection in the first instance. Care should be taken not to regard the list as furnishing typical examples of elected and appointed judiciaries, since this would be misleading. Governors, in making appointments to fill short unexpired terms, are not guided by the same sense of responsibility as governors in other States charged with the responsibility of naming judges for life. The nominees must in any case face an election in a few months,¹ so that the sense of responsibility to the public is largely outweighed by the necessity of securing the continued support of the local machine. The local organization is not made up, in the main, of men of great intelligence or vision, because of the abhorrence of politics felt by men of this type. Selfish personal motives or the instinct of political self-preservation dominate the local machine, and its nominations to the Governor are apt to represent payments for political debts, or the best chance to win the subsequent election. "Has he earned it and can he win?" asks the local committee, and the Governor usually queries, "Is he decent?"² The public has the best chance when the party in power fears defeat at the next election, or when some dramatic episode focuses attention on the forthcoming appointment.³

With these qualifications, the lists of judges first appointed and first elected may be compared. On the whole, the opinion is probably warranted that the appointments, especially those to the Municipal

¹ Appointed judges must defend their office at the next succeeding election.

² "The mere fact that he has no brains will not disqualify him for the appointment," said one man who has an intimate knowledge of these appointments over a period of years; "unfortunate is the man who has nothing to recommend him but qualifications for the office!"

³ The excellent appointment of John Dempsey in March, 1921, to succeed W. H. McGannon as Chief Justice of the Municipal Court, is an example. Governor Davis and the local committee set a wholesome precedent by virtually accepting the nominee of the executive committee of the Bar Association. It would be advisable, however, if the Bar Association committee sent in several names instead of one when vacancies occurred.

Court, do not include men as conspicuously unsuited for judicial office as a few of those elected.

It should also be remembered that the judges elected to the Municipal bench in the first election in 1911 were "hand-picked" and virtually appointed. Both lists include men of outstanding ability, and there is apparently no lesson to be learned by comparing the age and previous experience of the men in the two lists. All the judges known for their talent in securing publicity are contained in the elected list. Probably the only clear moral which can be drawn is that a heavily embarrassed system of appointing produces as good, but not as poor, results as the present method of popular election. The lists follow:

COMMON PLEAS BENCH

Judges elected and appointed since 1900

Appointed	Elected	
1900-1911	1900-1911	
Shallenberger	Babcock	Keeler
G. L. Phillips	Tilden	Estep
	Kennedy	Vickery
	Lawrence	Collister
	Schwan	Foran
1911-1921	1911-1921	
Lieghley	Gott	Cull
Friebolin	Pearson	Kramer
Morgan	F. E. Stevens ¹	F. C. Phillips
Day	Powell	Terrell
Bernon	Levine	Allen
	Baer	

MUNICIPAL COURT

Bernon	Beebe	} 1911 Elec- tion
White	Sanders	
Keough	McGannon	
Day	Kramer	
Selzer	Baer	
Sawicki	Cull	
Terrell	Levine	
Howells	McMahon	
Pearce	Moylan	
Dempsey	Silbert	
	F. C. Phillips	
	F. L. Stevens	

¹ Subsequently appointed after being defeated for reelection.

2. *The Use of Vacancies*

If the opportunity were skilfully employed, vacancies might be used to improve greatly the personnel of the bench, since appointed judges have a large advantage in the ensuing election. This is a matter for the Bar Association to take up with the local executive committees of the parties, with a view to inducing these committees, as in the Dempsey case, to accept the nominees of the Association. The Bar Association should either hold a primary and recommend the winners to the Governor, or recommend several alternate choices so that the Governor may have some latitude.

3. *Selection in the Usual Course*

With respect to the selection of judges in the usual course, the following methods are recommended in order of preference:

- (1) The appointive method, with provision for a retirement election whereby a judge runs against his own record.
- (2) A modified appointive method, as, for example, an elective Chief Justice who appoints his associates.¹
- (3) A modified elective system whereby judges are elected for a short first term, but if reëlected, then for progressively longer terms. Judges standing for reëlection should not run against other candidates, *but only against their own records*. The single question presented to the electorate should be, "Shall this judge be retained?"

If the judge is defeated, his successor should be chosen at the next succeeding election.

These three recommendations, in order of preference, are probably in inverse order of probability of achievement. It is, therefore, most useful to consider the third suggestion. The provision for a short trial term gives the public an opportunity to learn what character of a judge it has chosen. If the short term record is satisfactory, the judge will be returned for a longer term, thus giving the community the benefit of his judicial growth and experience. By eliminating a campaign against rivals and confining a judge to the single issue of his service on the bench, it is hoped that many of the evils of electioneering will be eliminated and that a tradition will be established of giving practically a life tenure to

¹ It is not intended here to discuss at length various suggested plans. They have already been the subject of searching study. See *Bulletin IV-A*, American Judicature Society, 1915, Chicago.

able judges. Cuyahoga County has already established such a tradition with respect to the probate judges, who have been usually unopposed at elections. Such a tradition can be established for the other courts if the judgeships are not "scrambled" among a field of candidates.

4. Joint Committee on the Judiciary

Even under such a plan, however, it would be necessary to select new candidates for the initial and special elections. It would become necessary for Cleveland to mobilize its most influential and intelligent forces so as to bring about concentration of electoral power on the most desirable candidates. In Cleveland the strongest forces are the party organizations and the press, and the most intelligent, the Bar Association and the Civic League. The following suggestion is already in the minds of many thinking men of Cleveland of both parties, and if put into effect, would do much to improve the personnel and standing of the bench.

There should be a joint committee on the judiciary, composed of not more than three members of the executive committee of each of the major party organizations and of the Bar Association, and representatives of the leading civic organizations. This joint committee should then select a slate of candidates to be supported at the primaries and at the election. From the coöperation which the press has given in the past to occasional joint efforts of this sort, such a plan would almost certainly be welcomed and supported by the great dailies of Cleveland.

Of course, the mere indorsement of a joint slate would not be sufficient. The political organizations of each party would have to produce results at the polls, and to the Bar Association and Civic League would fall the task of organizing and directing the intelligent citizenship.

CHAPTER V

THE MUNICIPAL COURT

THE present Municipal Court was launched in 1912 with fine civic enthusiasm, in the belief that Cleveland had finally attained a modern city court. It is not within the scope of this report to consider whether or not the high hopes of those days have been realized so far as its civil jurisdiction is concerned, but nine years of experience do not justify any satisfaction with the handling of criminal causes. Lawyers and public officials appraise the criminal division of the Municipal Court when they persist in calling it, as they called its predecessor, a "police court."¹

PHYSICAL CONDITIONS

Civil causes, however small, are heard in the imposing new City Hall on the lake front, in court-rooms of dignity and charm; criminal causes, outside of the few jury trials held in the City Hall, are tried in the old police court-rooms at the corner of West Sixth Street and Champlain Avenue, N. W. This small building is used for police headquarters, bureau of criminal identification, office of city prosecutor, probation office, clerk's office, city jail, as well as court-house, and is inadequate for all these purposes. Several years ago the city voted \$1,250,000 for a new jail and criminal court. The commission began work on the lake front and then asked for additional bonds for the building. The voters of Cleveland refused the request, and the city has, therefore, gained nothing but an excavation. It is not necessary to build edifices like the City Hall or County Court-house, but a community which could erect those buildings should not accept the present stalemate with respect to an institution even more vital to its citizenship. A simple, modern criminal court-house and jail is an immediate necessity. One way of securing it speedily would be to compel the leading citizens of Cleveland

¹ Since this report is based upon a study of the court as it was in the early months of 1921, it is in no sense a criticism of the new Chief Justice, Judge Dempsey, who was appointed in March, 1921, and who was unable to attack the problems in the criminal branch until May because of the unprecedented congestion of the civil list. On the contrary, Judge Dempsey has given evidence that he appreciates many of the evils and shortcomings pointed out in this chapter, and has already, on his own initiative, begun some badly needed reforms, such as the division of cases into sessions, and the starting of process in certain cases by court summons.

to attend one of the daily sessions of the "police court." A former municipal judge has recommended that "the place should have a hose turned on it." After this is done, a carpenter, a painter, an electrician, and an expert on ventilation should be called. Their services would make the place tolerable until new quarters are available. Little can be done, however, to relieve the extreme congestion of the auxiliary departments. It is greatly to the credit of the clerks' and probation officer's staffs that they have been able to work with any degree of success amid such an environment.

DECORUM

Accepting the court-rooms as they are, little can be said for the conduct of cases therein. From 150 to 300 cases a day are assigned to the two court-rooms, and the visitor is immediately struck with the lack of orderliness in handling the list. The lawyer who has only an occasional case, perhaps an ordinance violation, may wait with his clients and witnesses from nine o'clock until two, not knowing when his case will be reached. This apparent chaos is, of course, to the advantage of the regular "police court lawyer," who has a number of cases each morning.

The decorum in Room 1 is somewhat better than in Room 2, but the first room has higher ceilings and is better adapted for hearings. On a day during the period covered by the survey Judge Howells was sitting in Room 1 and Judge F. L. Stevens in Room 2. In neither room did the proceedings reveal the necessary dignity of a court. The rooms were crowded with lawyers, defendants, witnesses, police, hangers-on, and sightseers, many chewing gum or tobacco, even when addressing the court. In Room 2 an attorney was waving a cigar in the judge's face by way of emphasizing his argument. Crowded around the bench were lawyers, witnesses, and officials, almost screening from view the testifying witness. Others in the court-room were standing about talking and were occasionally asked by the judge to be quiet in order that he might hear the testimony—this, although the witness chair was placed directly against the judge's bench. The only person who seemed to be able to follow the testimony was a young woman reporter from one of the newspapers who took up a position behind the witness-chair.

In order to make themselves heard in this court-room, lawyers and others have to lean over the bench to address the judge.¹ This produces

¹ Formerly the end of the bench was open so that attorneys, politicians, etc., could go in back of the bench to whisper. When Judge Levine was in the Municipal Court he had long arms put on the ends of the bench, so that all conversation had to be held across it. These arms are now a permanent part of the equipment.

an impression of a confidential communication, which, although false, lends color to the belief that certain lawyers have "pull with the judge."

The question of decorum lies with the judges. A space should be cleared before the bench and on both sides, marked off with a railing, and no one should be allowed within the inclosure except attorneys in good standing. Everyone should be compelled to sit while the court is in session, and if every seat is taken, no additional persons should be admitted. Any talking during a hearing should be immediately suppressed. Several years ago Judge Selzer had the witness-chair moved away from the bench so that its occupant could not give the appearance of talking for the judge's ears only. On account of the poor acoustics and confusion in the court-room the chair is again next to the bench. It should be moved away, and if order is maintained, a witness can make himself heard clearly enough.

SEPARATE SESSIONS RECOMMENDED

Separate sessions dealing with different groups of cases should be established, as, for example, one for misdemeanors and ordinance violations criminal in nature; one for felony examinations; one for women offenders; and one for violations of ordinances only quasi-criminal in their nature. Possibly the last mentioned might be held in the City Hall in order that otherwise law-abiding citizens may await their turn and have their cases heard in an atmosphere less suggestive of crime and degradation. During the trial of a sexual offense the court-room should be cleared of everyone not concerned in the particular case. It may also be possible to hold different sessions in the morning than in the afternoon. At present there is a rough division of cases, Room 1 being used for "city cases" (ordinance violations) and Room 2 for "State cases" (misdemeanor and felony examinations).¹

SHIFTING CASES FROM ONE JUDGE TO ANOTHER

One of the assistant clerks has discretion to decide whether the list in one room is congested so that cases should be transferred from one session to the other. Since a lawyer may get along better with a certain judge than another, or the disposition of a judge may be known to be strict or lax in certain classes of cases, this discretion often exposes the

¹ In 1920 these cases were divided as follows: felony examinations, 3,064; State misdemeanors, 11,843; ordinance violations, 11,181. Since 1912 felony examinations increased 204 per cent.; misdemeanors, 167 per cent.; ordinance violations, 376 per cent.

clerks in charge to great pressure to transfer cases from Room 2 to Room 1, and vice versa. It is impossible to ascertain how many cases are shifted upon solicitation,¹ but the atmosphere is charged occasionally with rumors that certain cases are "thrown" before a particular judge.

Table 10 may be significant as showing the tendency to shift cases. During the winter of 1921 Judge Stevens sat in Room 2, and in January startled the community by his severity in handling cases of State liquor law violations which came up properly in Room 2. Judge Howells, sitting in Room 1, acquired a reputation for being only moderately severe in handling such cases, so that it was regarded as more advantageous to be tried by Judge Howells than Judge Stevens. Judge Sawicki sat for Judge Howells during one week in January.

TABLE 10.—SHIFTING OF CASES IN MUNICIPAL COURT, JANUARY, 1921

	Judge Stevens	Judge Howells	Judge Sawicki
1. Total arraigned in January and ultimately disposed of by	311	166	58
2. Number disposed of in January by	260	106	58
3. Number arraigned in January but "passed" into succeeding months ultimately tried by	51	60	..
Subdivision of Group No. 3:			
a. Arraigned before Stevens, tried by Howells	..	28	..
b. Arraigned before Howells, tried by Stevens	..	..	..
c. Arraigned before Sawicki, tried by Stevens	..	..	..
d. Arraigned before Sawicki, tried by Howells	..	3	..

It so happened that Judge Stevens became more moderate after January 31, due perhaps to the rather unfavorable reception of his spectacular procedure, and Judge Howells grew stricter, perhaps unconsciously influenced by Judge Stevens' severity, so that the shifted defendants did not profit greatly. Table 11 shows these dispositions.

TABLE 11.—ORIGINAL DISPOSITIONS OF CASES IN MUNICIPAL COURT, JANUARY, 1921

	Number fined	Average fine	"Nolled"	Discharged	Total
a. Arraigned before Stevens, tried by Howells	12	\$271.42	2	14	28
b. Total tried by Stevens	249	452.21	18	44	311
c. Total tried by Howells	100	294.45	7	59	166

¹ The records of the clerk's office are discussed later.

SCANT ATTENTION TO INDIVIDUAL CASES

With the cases organized into different lists for different sessions, it may be possible to avoid some of the waste time now involved in waiting for cases to be reached. The principal advantage, however, would be to enable the judges to give more attention to individual cases. Unless a case is of public importance, has news value, or has interested influential people, it is apt to be disposed of before one can say the proverbial "Jack Robinson." This results practically in depriving of his day in court the poor or ignorant petty offender, and plays directly into the hands of the defendant with "wire-pulling" friends. Table 12 gives the number of dispositions in the criminal branch compared with the number in the civil branch of the Municipal Court, showing the amazing discrepancy between the time devoted to deciding questions involving, on the whole, petty property rights, compared with those involving individual liberty.

TABLE 12.—COMPARISON OF NUMBER OF CIVIL AND CRIMINAL CASES PER JUDGE, MUNICIPAL COURT, 1919

Criminal cases, average per judge	Civil cases filed, average per judge	Civil cases disposed of, average per judge
1. State examinations 1,723	1. Over \$300 and equity 446	1. Over \$300 and equity 386
2. Misdemeanors 5,398	2. Tort less than \$300, contract \$100-\$300 867	2. Less than \$300 and miscellaneous (exclusive of conciliation) 2,036
3. Ordinance violations 4,767	3. Contract less than \$300 and miscellaneous 1,354	
	4. Conciliation 685	
Criminal per judge 11,888	Civil per judge 3,352	Civil per judge 2,422

In the hurly-burly of the day's work the judge cannot examine closely into statements and excuses of lawyers, police prosecutors, and police officers, and this affords opportunities either to escape the law by "putting it over" the judge or hastily to punish the innocent.

BAD EFFECTS OF MANY CONTINUANCES

Most serious of all is the practice of continuing or passing cases.

Rule 3, of the Municipal Court,¹ criminal branch, relating to con-

¹ "Motions for a second continuance must be in writing, setting forth the facts and reasons therefor (unless dispensed with by the court). * * *"

tinuances, has become atrophied. It is the object of every police court lawyer to get his case continued as many times as is necessary to disgust the witnesses for the State,—who have been wasting their time in a most disagreeable place,—and to cause the prosecuting police officer to lose interest in the case in the face of more pressing matters.

Table 13, based upon a study of every tenth case in the criminal branch for a period of two years, gives the average time between arrest and disposition. It is to be noticed that it takes the least time to find a defendant guilty, a longer time to discharge him, and the longest time to “noll” or dismiss his case. This table is based on *all* cases, including those ill-advised offenders who allow their cases to be heard on the same day as the arrest, so that the intervals are shorter than they would be if the table were confined to continued cases.

TABLE 13.—AVERAGE NUMBER OF DAYS BETWEEN ARREST AND SENTENCE, MUNICIPAL COURT CASES, 1919-20, CLASSIFIED BY DISPOSITION AND BY TYPE OF CASE¹

	State examinations		State misdemeanors		City misdemeanors	
	Number of cases	Average number of days	Number of cases	Average number of days	Number of cases	Average number of days
Discharged	81	8.1	285	6.0	224	4.9
Guilty of offense charged	..	..	1,381	3.1	1,325	3.3
Guilty of lesser offense	35	7.1	..	..	..	..
Bound over	446	3.3	..	..	..	..
No papers	4	..	1	..	..	..
<i>Nolle prosequi</i>	58	18.0	84	11.3	133	12.5
Dismissed, want of prosecution	14	10.1	79	13.7	4	2.3
Miscellaneous	4	..	8	33.8	4	6.0
Total	642	5.5	1,838	4.4	1,690	4.2

A study of cases of violation of the State liquor law (Table 14), brought before the court in January, 1921, shows that cases which were disposed of in the same month received severer fines, contained a smaller per-

¹ The number of these cases is not equal in the aggregate to the total number of cases, because the data of time interval are not available in every case. The term “sentence” means the final disposition of the case, whether or not found guilty, except in those cases in which action, such as mitigation, was taken by the court after sentence: in the latter case the term “sentence” is used in its literal significance.

centage of "nolles" and discharges, and a much greater number of workhouse commitments than the cases which were "passed" into succeeding months.

TABLE 14.—CASES OF LIQUOR LAW VIOLATION ARRAIGNED IN JANUARY, 1921¹

	Number	Per cent.	Average original fine	Committed to workhouse for failure to pay fine
Sentenced in January	307	74	\$422.70	62
Discharged in January	93	22	..	..
"Nolled" in January	17	4	..	..
Total	417	100	..	..
Sentenced after January 31	74	67	309.45	4
Discharged after January 31	28	25	..	..
"Nolled" after January 31	9	8	..	..
Total	111	100	..	..
Grand total	528	..	..	..

Cases in which continuances are of most advantage to the defendant are those in which the witnesses are disinterested bystanders, as in automobile accident cases resulting in charges of manslaughter or driving while intoxicated. "Continuances kill accident cases," says a police officer posted in the court-room. "The witnesses won't come down and swelter, or else they move in the meantime. The regular lawyer's game is to tire out the witnesses."²

Such continuances not only enable the guilty to escape, but play into the hands of unscrupulous lawyers who desire to use the criminal court

¹ Exclusive of cases appealed.

² A typical case is No. 67557, manslaughter charge, the complaint alleging reckless driving while drunk. The notes in the police records and statements secured tend to establish clearly that the defendant was going at an excessive rate of speed and was intoxicated. The two police officers whose testimony would have been most positive as to the intoxication were not called, and the case was continued after at least one of the important witnesses had testified. The entries are:

"July 22, continued to July 29, continued to August 26, continued to September 16, continued to September 30, discharged by Judge —."

to exact payment of a civil claim for damages, whether well founded or not.¹ If the case were tried immediately upon its merits, such lawyers would be unable to use the machinery of criminal law as instruments for extortion.

THE "MOTION IN MITIGATION"

The tendency cannot be effectively curbed, however, unless the "motion in mitigation" is eliminated from the practice of the court. This motion, apparently peculiar to the police court, makes a farce of judicial business, more than any other single factor. After a defendant has been adjudged or has pleaded guilty, the court imposes sentence. To the uninitiated the case is over, but this is not so. A "motion in mitigation" is then made, which is sometimes granted the same day, after trial, and sometimes ruled upon weeks and even months later, after many continuances.² Thus the court satisfies the complaining witness in open court, and has the opportunity later to placate the defendant's lawyer. Lawyers report instances where their clients were found guilty, though clearly innocent (in the belief of the defendant's lawyer), and upon protesting against the "outrage" of a conviction, were advised to make a "motion in mitigation." This they did, and the motion was later granted.

The "motion in mitigation" affords the setting for the performing judge, enabling him to do "stunts" which get into the front page of the newspapers, and then to undo the damage quietly at a later date. Mention has already been made of Judge Stevens' campaign against liquor law violators during January, 1921, and the notoriety which resulted from it. Considering the fines for this offense during 1919 and 1920 (taking every tenth case), 61 per cent. were less than \$200 and 99 per cent. less than \$400. About 26 per cent. of these sentences were suspended. The average original fine imposed by Judge Howells for January, 1921, was \$299.12, and the average fine imposed by Judge Stevens (exclusive of five appealed cases)³ for the same period was \$468.72.

¹ Several cases of alleged extortion have been brought to the attention of this survey.

² On November 23, 1920, Louis Ettkin was fined \$200 and costs for violating the liquor law, and the same day the fine was changed to \$100 and costs. Notice of motion in mitigation was given, and the case continued eight times until February 21, 1921, when the execution docket shows the entry, "motion in mitigation overruled." The original file, however, shows that at some stage \$75 was suspended, so that Ettkin paid \$25 and costs on February 21. Meanwhile bond had been forfeited twice and the forfeitures set aside.

³ The inclusion of appealed cases would make Judge Stevens' average a trifle higher.

Excluding cases sentenced to the workhouse for failure to pay fines, Judge Stevens' average fine was \$376.62. The average amount actually paid in Judge Howells' cases was \$180.17 and in Judge Stevens' cases (exclusive of workhouse commitments), \$176.61. The "motion in mitigation" is thus seen to be a leveler of fines in this particular group of cases.

It is said that the "motion in mitigation" serves the purpose of allowing a defendant time to pay his fine, and after the fine is paid, the motion is overruled as a matter of form. Undoubtedly the motion is used for this purpose and also to allow the court time to investigate the defendant to ascertain whether the fine imposed is a just one. The vice of the motion is that the court apparently disposes of the case, and at a later date, when no witnesses are present, makes a change. This vice is intensified by a system of record keeping, discussed later, which makes it difficult to find out what actually happened in a particular case. The court should make its investigation *before* sentence, not afterward, and the sentence once imposed, should stand. This could be accomplished by continuing a case for sentence to a certain day after the issue of guilt is determined, in case the court wishes further advice as to the condition of the defendant. This method would be more apt to impress the defendant with the seriousness of the court than the game of thimble played with motions in mitigation.

The extent to which these motions are used may be seen in the fact that of 314 fines for liquor law violation in cases originating in January, 1921,—exclusive of cases subsequently appealed or committed,—totaling \$101,650, motions for mitigation were made in 193 cases and allowed in 114 cases, reducing the fines by \$42,135.¹ Of these fines, 131 were over \$200 each, totaling \$75,500, in which 103 motions in mitigation were made, 85 of which were allowed for a total reduction of \$39,150, or nearly 52 per cent. in amount. An average of 15.43 days was required to overrule a "motion in mitigation" and an average of 35.15 days to grant it. In cases where the fines were more than \$200 each, an average of 23.5 days was required to overrule the motion and 36.24 to grant it. As in the case of the hearing on the merits, delay favors the party who can keep longest alive his motion in mitigation.

THE "POLICE COURT RING"

Owing to the fact that no record is kept of attorneys in cases before the criminal branch of the Municipal Court, no statistical data can be

¹ This is exclusive of cases where fine was suspended in whole or in part on the day the fine was imposed. Counting such suspensions with the motions in mitigation, the total reduction from original fines was \$48,885, or 32.3 per cent. in amount.

submitted of the attorneys practising in this court. It is common knowledge, however, that certain attorneys monopolize most of the business, and in a rough fashion divide the practice among themselves. Thus one group represents prostitutes, another pickpockets, another suspicious persons, etc. Any one connected with the court knows the names of these attorneys.

Theoretically, there is no objection to a limited group practising in a particular court. Indeed, under wholly different conditions a limited group of advocates would serve to facilitate the administration of justice by focusing responsibility for the ethical conduct of cases on a definite group. In the "police court" of Cleveland exactly the opposite has resulted. Men of ability as lawyers, or of fine sensibilities, shun this court, so that there is a tendency for men of less refinement to drift into the practice. The activities of these men are nowhere spread upon the record; they involve people who dare not or do not know how to complain. Some of these lawyers were formerly police prosecutors, in which capacity they made the acquaintance of habitual offenders and professional crooks; some are city councilmen with a voice as to the salaries of certain court attendants and a control over votes, which a weak judge cannot entirely overlook; others are connected in various ways with people of political importance.

In the trail of the police court lawyer come the "runner" and the "professional" bondsman, not even subject to the slight check of belonging to the legal profession. Some of the bondsmen are notorious characters, others operate gambling places in the guise of "political clubs." The presence of these men in the corridors of the court-rooms gives rise to rumors of "underground" connections with certain prosecutors, which, even if false, greatly damage respect for the courts in the minds of the unfortunate and their friends.

In some cases these lawyers and "runners" have been compelled to pay back to clients money which they extorted under the claim of "influence." Years ago a police prosecutor, now a Common Pleas judge, tried and convicted one of these men for obtaining money under false pretenses, before the very judge with whom the lawyer claimed to have influence. Judge Howells became for a time so disgusted with lawyers defending prostitutes that he arbitrarily refused to permit any lawyer to represent a prostitute before him. He had just fined a prostitute \$10 when the police prosecutor whispered to him to suspend the sentence. The lawyer also urged suspension on the grounds that his client could not pay the fine. On inquiry the judge learned that the girl had paid the lawyer a fee of \$75. It is said that formerly a custom obtained of raiding

prostitutes when the city needed money, and although this custom has been stopped if it ever existed, there is some opinion to the effect that they have been occasionally arrested when their lawyers needed money. Except in an unusual case, the prostitute fares as well or better in court *without any police court lawyer*, especially since the establishment of the Woman's Probation Department under Mrs. Antoinette Callaghan.

TABLE 15.—PERSONS ARRESTED FROM JANUARY 1, 1918, TO DECEMBER 14, 1918, RELEASED ON BAIL BONDS SIGNED BY..... AND REPRESENTED BY..... AND ATTORNEYS¹

Disposition of cases	Number	Per cent.
Bound over to grand jury	30	14.0
Workhouse sentences	20	9.3
Workhouse sentences suspended	27	12.6
Money fines only	5	2.3
Money fines suspended	4	1.9
Discharged	44	20.7
"Nolled"	59	28.0
No papers	11	5.1
Bond forfeited, <i>capias</i>	7	3.3
No disposition	6	2.8
Total	213	100.0

It is no longer necessary for police court runners to look over the contents of the "bull pen" for old and new clients.² Some look over the police blotter, and, it is charged, sometimes secure the release of prisoners on personal bond (without surety) in order to make them retain the

¹ These men were called counsel for the "International Association of Pickpockets." The firm has not been active in the Municipal Court since the grand jury investigation of 1919. The figures are submitted, however, as showing a state of things which probably exists as to some other Municipal Court lawyers, if the records were available for study. Pocketpicking has fallen off greatly since this firm ceased to be active. One member is an ex-police prosecutor; the other has since been convicted of arson, case reversed on error in the Supreme Court; both men were formerly associates of a prosecuting attorney for Cuyahoga County.

² "One visit to the central court is usually sufficient for a stranger—one day's visit to the place being as complete as a month's sojourn within its desolate walls. * * * Yet there are a few lawyers in this city who make a practice of habituating the place, picking up such crumbs as these, managing somehow to exist on them. They can be seen every day, a half-dozen or so of them, waiting in eager expectation for the herd to be driven in from the pen; and if one of them looks as though he might have \$5 about him, he is besieged by anxious solicitors, ready and willing to take his case."—Kennedy and Day, *Bench and Bar of Cleveland*, 1889. The spirit of the place has not altered greatly in over thirty years.

lawyers in question. For some of the lawyers this is unnecessary because their clientele and reputation are established.

Until recently the lawyer himself could be bondsman for his client. Happily, this vicious practice is ended by a court rule, but not without leaving an indication of the activities of a certain group of lawyers who acted as bondsmen for clients whom they represented.

The length of their trail can be judged from figures in Table 15, compiled by the Bureau of Criminal Identification, Division of Police.

These cases included 125 known criminals whose pictures were in the Rogues Gallery at the time of their arrest. These were disposed of as in Table 16.

TABLE 16.—DISPOSITION OF CASES OF 125 KNOWN CRIMINALS

Disposition	Number	Per cent.
Bound over	18	14.4
Fined, suspended	1	0.8
Workhouse	12	9.6
Workhouse, suspended	18	14.4
Discharged	24	19.2
"Nolled"	38	30.4
No papers	6	4.8
Bond forfeited, capias	5	4.0
No disposition	3	2.4
Total	125	100.0

Many of these criminals were notorious offenders, and some were subsequently implicated in murders in Cleveland. Some of those not included in the list of known criminals have later been added to this class by the police.

It cannot be said that the judges are individually responsible for the record shown by these cases. In the great majority of the felony charges the defendants were bound over for the grand jury.¹ In the other cases the story is told in the number of cases "nolled" and "no-papered" by the police prosecutor. The former is done by motion before the court; but the absence of centralized judicial administration through a watchful and directing administrative head, the great confusion of the court, and lack of a courageous, highly skilled, and completely disinterested prosecutor, or failing that some "*amicus curiae*" upon whom the court can

¹ An ex-judge stated that he informed one of these attorneys that all of his clients accused of pocketpicking were guilty. They would never take the stand for fear the police would fasten their record upon them.

rely for disinterested advice, are largely responsible for the court's part in cases "nolled" and sentences suspended. The police court lawyer is most adept in taking advantage of those conditions which inevitably make for abuse of law and the defeat of its purposes.

BAIL BONDS

Because of the reaction occasioned by the "crime wave" and obvious breakdown of the courts, the bail bond situation in the Municipal Court has received a wrong emphasis. In the matter of assuring the attendance of the defendant in court, bail is not a serious problem. During the nine years of the Municipal Court to January, 1921, there have been approximately 2,200 forfeitures of bail bonds which had not been set aside either by producing the defendant or through purging him of contempt. Compared with 170,137 cases disposed of during this period, this is a relatively small number. Of 562 cases of liquor law violation before the court in January, 1921, only six bond forfeitures were still outstanding on April 19, 1921.

The real evil in the situation is not the matter of easy bail, but the disreputable professional bondsmen who make a business of exploiting the misfortunes of the poor, and whose connection with "runners" and "shysters" tends to prostitute the administration of justice in the inferior courts. To eliminate the professional bondsmen requires not a stiffening in the matter of bail, but a removal of the necessity of bail wherever possible, and a relaxation where such a removal cannot be accomplished.

A step forward was made in the provision for cash bail in G.C., Section 1579-20. The tendency of cash bail to drive out the professional bondsmen to some extent is apparent. Another excellent provision is Rule 10, of the criminal branch of the Municipal Court, providing for the release of a defendant upon a personal bond without surety, where the offense charged is a misdemeanor punishable by fine only or a violation of a city ordinance. This rule should be extended to cover other minor infractions of the law which may be punishable by short terms of imprisonment. From what can be learned, however, the administration of this rule has not been wholly successful. The clerks in charge have established a practice of requiring someone to "vouch" for the defendant before releasing him on personal recognizance. This has apparently revived the opportunity for the professional bondsman and the runner, who are active on the trail of arrested persons in order to get them out on a bond without sureties. Rule 10 requires that a defendant, in order to be released on a personal bond, must have had a known place of

residence within the city of Cleveland within six months next preceding his arrest. It should be an easy matter for the clerk's office to establish this fact by the testimony of a neighbor, without requiring anyone to "vouch" for the defendant. At any rate, professional bondsmen and runners should not be accepted, for it is against the spirit of the rule to retain the hold which these parasites have on the petty offenders. How far the enforcement of the rule has drifted from its original purpose may be gathered from the fact that persons charged with vagrancy are sometimes released on personal recognizance, although the very nature of the charge would preclude a known residence for six months and the police blotter shows an entry of "no home."

The establishment of the office of bail bond commissioner in the spring of 1921, followed by the appointment of John J. Busher to that position, should assure an improved operation of this rule. The matter should be worked out in conference between the Chief Justice, the bail bond commissioner, and the chief clerk.

A most beneficial step would be the establishment in petty offenses of beginning process by means of a summons instead of a warrant. It is absurd that known residents of Cleveland should be arrested for violation of traffic and other ordinances and for misdemeanors not serious in their nature. This not only provides opportunity for the professional bondsman and imposes unnecessary hardship upon the accused, but also involves an enormous waste of time by members of the police force, the clerk's office, and the jail attendants. In such cases it should be sufficient, if the policeman handed the accused a summons to appear in court upon a certain day. The summons has replaced the warrant in many other cities.¹ In Detroit it has an extensive use and has proved to be a most successful labor-saving device. In that city a warrant is not issued unless the accused fails to respond not only to the original summons, but to an alias summons issued on the day of his non-appearance in court. In Cleveland an informal summons has already been established in the police prosecutor's office. In certain classes of cases, notably neighborhood quarrels and the like, the police prosecutor summons the party into his office in an endeavor to straighten out the dif-

¹ This is also true in England. "It is considered very improper to issue a warrant for the arrest of a person whose attendance can be secured by summons. In a recent trial at the Old Bailey, where a shopkeeper was on trial for receiving stolen property, it appeared that he had been arrested upon a warrant. The judge inquired particularly why a warrant had been issued, and then stated that a summons would have been sufficient."—*Criminal Procedure in England*, Lawson and Keeder, Massachusetts Law Quarterly, Volume 5, Number 3.

ficulty without the intervention of the court. In theory, at least, this informal procedure is a considerable step forward, but it is obviously vulnerable to abuse and does not go far enough. The summons should not be a discretionary matter with the prosecutor, but should be made the normal mode of beginning of judicial process in certain classes of cases.

There will always remain, however, a residue of cases in which a bail bond with sureties is necessary. The number of such cases may be considerably reduced by the prompt compulsory trial of cases and by the erection of a jail with decent and adequate facilities.

These steps should reduce to a minimum the number of cases in which a professional bondsman may hope to make a profit. By eliminating the opportunity for such business, those who are now engaged in it will seek a living elsewhere. So far as it may be possible to eliminate the professional bondsman, his business should be regulated like that of the "loan sharks" in many jurisdictions.

THE CLERK'S OFFICE

In this section is discussed only that part of the clerk's office which handles the records for the criminal division. This office is in the Police Court Building, and is altogether inadequate for records, files, or human beings working therein.

The Chief Clerk, Peter J. Henry, devotes most of his time and attention to this office rather than the civil branch.¹ He is well intentioned, quick in human sympathy, and his popularity with his employees does much for the *esprit de corps* of the staff. The first assistant, James Cantillon, is an earnest, hard-working man, who was unfailing in his patient coöperation with the survey. Like all those who have known only one way of doing things for a long time, both are inclined to be somewhat hostile to suggested innovations. To one acquainted with the lack of physical facilities and the antiquated method of record keeping which prevails, it is a constant source of wonder that the system works at all, however badly.

The method has apparently been inherited from the old Police Court, and is not in any sense adequate for the present needs.² A record system should accomplish three things: first, enable the clerks and the judges to prepare and follow each day's business; second, leave an accurate,

¹ Contrary to the practice of ex-Chief Justice McGannon, who apparently neglected the criminal branch almost entirely.

² In 1912, when the Municipal Court succeeded the Police Court, the total number of cases was 7,788. In 1920 the number was 26,088, an increase of 235 per cent.

easily accessible record of what has happened in each case to date; third, automatically build up statistics which the Chief Justice and the public ought to know as an authoritative basis for appraisal of the courts' work and the basis of its continuous improvement.

Under the system in use the clerks can make up a day's docket fairly well, but there is no adequate way of following the day's business and there is complete failure to secure the second and third objects.

The principal record kept is the "Execution Docket," which is not a docket and has nothing to do with executions. Two sets of records are used, one for "city cases" and one for "State cases." These books are, in fact, journals of the court's business, and the entries for each day are copied therein from penciled notations on the original papers. Thus a case may appear on 10 different pages, if continued nine times, the cross-references to continued cases being forward only and not back, so that while it is possible to trace the history of most cases forward from an entry on a given day, it is not possible, in this book, to trace it back to origin. Even to run it forward means passing the eye over many entries of other cases until the name sought is located, and often the name is spelled differently in different places. Sometimes trace of the case is lost because it was advanced for trial before the continuance date, or the defendant did not appear on the day set, or the clerk made an error in copying the date to which the case was continued. A case is not given a file number until it is disposed of, and if brought up for further disposition gets a second and even a third number. At least seven times as long is required to get the history of a case from this record as would be the case if all the steps were entered in one place, under file number and name. Moreover, since no number is given until the case is finished, it is difficult to ascertain from this record which of several cases pending against the same defendant is being considered. On disposition, many cases are often grouped and given the same file number.

Pending cases are indexed by cards filed alphabetically, so that it is possible to consult the card, ascertain the date set for trial, and extract the original papers from a box containing all cases set for trial on the particular date.

The only approach to a history of the case is found on the file papers themselves, where the plea is entered, with the continuance date, the final disposition, and the name of the judge making final disposition. Nowhere is there a record of the attorney who appeared, or the prosecutor in charge, or the judge in any preliminary stage. As the notes are in pencil, it is not unusual to find an entry cancelled or erased and a new disposition written above the old.

To locate the case of John Stewart it would be necessary to perform the following acts, which might be profitably contrasted with the process of finding the history of a sales order in any modern mercantile business. A beginning is made by consulting an index book where the names are entered alphabetically according to the first letter only, so that one must go through a long list of names beginning with the letter "S". If the name is finally found (and the index has some omissions), the reference is to a folio page of "Execution Docket." If there are several cases of the same name, it is necessary to know the approximate date or else employ a process of elimination. With the folio page one finds an entry relating to John Stewart. It is then necessary to follow the entry forward through all the continuances, trying to pick the name out of many others on the dates given. Finally an entry is reached which disposes of the case, and unless a motion in mitigation is made, with further continuances, the case receives a number, usually in combination with other cases.¹ At the end of each day's cases in the "Docket" the names of both judges are stamped, so that it is not possible from this record to ascertain the judge who disposed of the case.

With the number of the case one goes to the files, which are kept numerically.² The penciled notations in the file will then tell the dates of the warrant and plea, continuances and disposition, and the name of the judge disposing of the case is stamped on the margin. If one wishes to know before whom John Stewart was originally arraigned, or before whom a new trial was held, or if one has so many cases that it is impractical to hunt through the original files, then one consults the "Judge's Docket," which is a journal of each day's work kept in two series of books, one for Room 1 and the other for Room 2. The names of judges regularly sitting in these rooms do not ordinarily appear in the "Judge's Docket," so that it is necessary to know the handwriting of each judge to be certain as to identity. This procedure for studying cases in this court is naturally complicated further by occasional errors inevitable in a system of this kind, and by some cases with unusual features, which do not fit comfortably into it.³ Moreover, the information when obtained

¹ If bail was forfeited, the case is not given a number and is not filed with the other cases. When the forfeiture is set aside, the clerk usually remembers to go back to the forfeiture entry and note the new folio page.

² On account of lack of room, files more than three years old are stored in the loft under a thick layer of dust.

³ To obtain a reliable history of cases of liquor violation appearing in the "Execution Docket" for January, 1921, only, required many days, when a ledger system of keeping records would have yielded the information in as many hours.

is incomplete. The only record books which are at all adequate are the bail forfeiture book, showing the history of such forfeitures,—exclusive of the question whether they have been collected, which is the work of the prosecuting attorney,—and a little volume giving the dates when cases are bound over for the grand jury, and the dates when transcripts are made out in such cases.

The objection offered to maintaining a ledger of cases instead of a day-book—"Execution Docket"—is that it would involve more work and more books. The former objection may be doubted because the present method involves writing the name and charge in each entry, even for continuances, whereas a ledger would show this information once and for all. Moreover, if a difference in record keeping were made between felonies, misdemeanors, and relatively trivial ordinance violations, much labor might be saved, especially if advantage were taken of modern bookkeeping devices.

We regard the question of record keeping as one of first importance. The activities of police court hangers-on are to a large extent dependent upon the assurance that they will leave no tracks behind them, and the watchful interest of the press and the public is baffled into inaction by obstacles which make vigilance too difficult. Moreover, the failure of the system to meet modern needs makes for informal action on the part of some of the judges, and informality in the court breeds suspicion and disrespect.

RECOMMENDATIONS

Other questions relating to the Municipal Court will be discussed under specific headings of a general nature. If the Municipal Court is retained as an institution,¹ the following recommendations are made at this time:

1. Adequate court-house and jail, pending the securing of which the present building should have all alterations necessary to make conditions tolerable, and to remove the sordid aspect of the surroundings.
2. A few physical devices for keeping the crowds in the court-room away from the judge's bench.
3. Increased formality in the court-room and strict maintenance of decorum.
4. A division of the cases into sessions according to their nature and the requirements of decency.
5. Orderly handling of the list, together with an established policy as to transferring cases from one session to another.
6. A stricter rule as to continuances, enforced absolutely.

¹ Its amalgamation with the Common Pleas Court has already been recommended, p. 18, *supra*.

7. Abolition of the "motion in mitigation."
8. The registering, before being heard, of every attorney who appears for a defendant.
9. Extension of the judge's term on the criminal division from three months to six months or a year, discretion remaining in the Chief Justice to alter such terms.
10. Conferences before each swinging of terms between the judges going out, the judges going in, and the Chief Justice, to determine policies in handling cases so as to avoid injustice resulting from the whims or political exigencies of judges, and to promulgate, alter, and secure enforcement of court rules.
11. Close coöperation between the Chief Justice, the clerk, and the police in ridding the court-room and corridors of "runners" and their kind.
12. Formation of a permanent committee of the Bar Association to assist the Chief Justice in cleaning out and keeping out the "shysters" and their followers, this committee to designate as associate members certain probation officers and representatives of social agencies actually working in the police court.
13. Legislation giving the judges summary power to award damages to any defendant in the court, equal to twice the amount paid by such defendant to any runner or lawyer, upon solicitation or upon any representation as to influence with any judge or other public official.¹
14. A statute or ordinance fixing the charges of professional bondsmen, scaled according to the security given such bondsmen, and clothing the judges with summary power to award damages equal to twice the amount paid in violation of such statute or ordinance. The bondsman should be required to file his affidavit with the bond as to the fee and securities received.
15. Blanket permission to any defendant *pro se*, or any private attorney representing such defendant, to conduct prosecution for any alleged violations of any statutes or ordinances intended to regulate the business and practice of the court. It would help the situation greatly if the Legal Aid Society undertook to enforce penalties for these violations.
16. Extension and closer supervision of the rule allowing for personal recognizances.
17. The formal beginning of process in minor offenses by means of a court summons.
18. The establishment of an entirely new filing system in the criminal branch of the Municipal Court.

¹ The Suspicious Persons ordinance covers soliciting, but it is not directly in the interest of anyone to see that it is enforced.

CHAPTER VI

THE COMMON PLEAS COURT

HISTORY AND JURISDICTION

THE center of the judicial system is the Common Pleas Court, established in 1788 by an Act for the Government of the Northwest Territory. The Constitution of 1802 continued the Common Pleas Court, dividing the State into three circuits, each circuit to have a president and not less than two associate judges. The judges were appointed by the general assembly for a seven years' term. Today, after numerous changes, there are 12 judges in Cuyahoga County alone holding office for six years, nominated in direct primary or by petition and elected on a non-partisan ballot. The salary is \$8,000 per annum.

This court has original jurisdiction of all felonies, upon indictment by a grand jury, and other offenses where the exclusive jurisdiction is not vested in an inferior court. It, therefore, disposes of all the serious cases and most of the misdemeanors from the country districts of the county.

At the present time four Common Pleas judges sit regularly in the criminal division, although only a few years ago two judges, or even one judge, were adequate for the entire volume of criminal business. The figures cited in Chapter I show that the necessity for this increase lies not only in the increased number of cases, but in the tendency to dispose of cases by trial rather than by plea of the defendant.

PHYSICAL CONDITIONS

Physically, the arrangements are a handicap to efficiency. Two court-rooms, the office of the clerk of the criminal division, and the criminal assignment commissioner's room are in the old county court-house on Public Square, but the prosecutor's office is in another building, and two sessions are usually held in the new court-house on the lake front. Because the court is thus scattered through three buildings, much time is lost, especially in getting witnesses and jurors from one court-house to another. Although the criminal clerk's office is in the old court-house, many journal entries, court orders, etc., are made up in the main office

of the clerk of courts in the new building, so that the records cannot be kept in one place, and often precious time is lost in transmitting important court entries and orders. The two rooms in the old court-house are dingy, but large enough. In one of the rooms there are chairs for spectators, but the other has only a bare space, railed off. All of the rooms in the new court-house are commodious and handsomely appointed. Only a few chairs, however, are provided for spectators.

DECORUM

The decorum is a considerable improvement over the Municipal Court, but not what it should be, considering the fact that each room has not only a clerk, but a bailiff whose chief business it is to maintain order.¹ The judges themselves, on the whole, do not seem to mind an atmosphere of unrest. In cases of public interest the packing of spectators behind the rail reminds one of the New York subway in rush hours. Confusion is inevitable. Chairs or benches should be provided, and no spectators admitted when the seating capacity of the room is exhausted.

Formalities, the symbols of dignity, which are familiar in an eastern court-room, are lacking. The judges wear no gowns; recesses are taken by the judges simply by getting up and leaving the bench; their return is unheralded by the court bailiff. Smoking in the court-room during a recess is not unusual. An air of familiarity is noticeable among the judges, and between them, the lawyers, and the court attendants. Although it is, of course, an exaggeration to say, as did the late Judge Foran, that "the courts are run like bar-rooms," it is perhaps true that the court-room, in dignity of atmosphere, does not rise above a salesman's display room in a hotel.²

TERMS OF THE COURT

At the present time the criminal division is active for only three terms during the year, totaling ten months. There is no court during July and August, in consequence of which many persons are confined over the summer awaiting action of the grand jury, and the September

¹ The county supports a bailiff for each of the 12 judges at a salary of \$1,820 per annum, and the total annual expenditure of the bailiff's department is \$52,000. It is a question whether this expense could not be greatly reduced by the establishment of messenger service from the assignment room, and the use of guards only when the number of spectators warrants it.

² It should be said that the decorum varies somewhat according to the judges on the bench, and that the conduct of civil causes is largely free from the atmosphere of confusion and informality surrounding many criminal trials.

term is thereby congested. From 1912 to 1918 inclusive there was a summer term, but this was abandoned in 1919, although at that time criminal cases were increasing greatly. It has recently been suggested by one of the judges that the April term be extended to include July. Owing to the fact that the civil business of the court is practically suspended during the summer, at least one session could be maintained, on the criminal side, with no hardship on the judges.

LACK OF AN EXECUTIVE HEAD

This court disposes of more than 3,000 criminal cases and 10,000 civil actions a year. In addition to the 12 judges, it has a varying supervisory control over the clerk's office, the two assignment commissioners' offices, the jury commissioners, the jury and grand jury, bailiff's office, and, including the judges, comprises a salary budget of over \$375,000 per year. This great enterprise, organized for the business of administering justice, is without any executive head whatsoever.

General Code, Sec. 1558, confers the power of making rules and regulations and assigning business upon the "judges of the Common Pleas Court." The judges hold occasional meetings to discuss pending matters, and by a process of rotation each judge becomes in turn presiding judge, or presiding judge of the criminal division. A bill was introduced at the last session of the legislature creating a permanent Chief Justice, but was defeated because of a rider providing for three additional judges. It cannot be said that the legislature was unwise in refusing to pass the bill in that form. Unless a real executive head to the organization has been appointed to study its needs and guide its administration with authority, the question of how many, if any, additional judges are needed cannot be decided intelligently.

"LOAFING JUDGES"

Much is heard among Cleveland lawyers of the "laziness" of certain of the judges. Recently a judge of the Court of Appeals stirred up a hornet's nest by declaring that "half of the judges are loafing." Although such blanket accusations are necessarily unjust to many hard-working judges, and create the impression that the best judge is the one who sits longest in his room,¹ there is undoubtedly much justification for

¹ Not only do many judges do their hardest work off the bench, but some of the best judges require a certain amount of leisure. Nevertheless, a judge who is late, even habitually so, in his room is a drag on the administration of justice. He causes witnesses to chafe and disappear and lawyers and clients to lose time, as well as respect, for the courts.

the feeling that business could be handled more expeditiously. No permanent improvement will be effected by the humiliating procedure of timing the judges, as has been done by the press, on occasions. What is needed is not for the judges to punch a time-clock, but a high professional atmosphere with an executive head allocating the work and watching its progress.

Some evidence of the advantage of proper organization under a Chief Justice may be gathered from the experience of the Municipal Court, which has had an administrative Chief Justice from its inception. This evidence is not as strong as it might be, because Judge William H. McGannon, for nine years the head of the court, was by no means an ideal Chief Justice. Now that the judge has been compelled to resign, there is a tendency on the part of some to exaggerate his shortcomings while in office. The history of the criminal branch of this court shows a headship lacking vision and constructive ability, and failing utterly in dignity. Nevertheless, Judge McGannon was a "hustler" and kept his associates at work.

On May 7, 1920, occurred the Kagy murder. Aside from the question of his innocence or guilt, this event threatened the judge with loss of reputation by reason of his close connection with the affair, his notorious associates, and the impending exposure of his private life. It is small wonder that from then Judge McGannon did not devote himself to his work with the same zeal as before. On November 26, 1920, he was indicted, and his fight for exoneration and liberty continued practically until his resignation in March, 1921. During this period he prepared for and faced two extended murder trials. It was not only mentally but physically impossible for the judge to devote much time to his duties as Chief Justice. One would expect the trial list to become clogged after May 7, 1920, and jammed after November, 1920. This is exactly what happened.

Diagram 7 shows the number of civil cases filed each month compared with the number of civil cases awaiting trial.¹ In each group the cases on the conciliation docket are omitted. It is to be observed that until June, 1920, the list followed roughly the number of cases filed by from one to two months. Note the unusual rise of the list after the Kagy

¹ An effort was made to secure the monthly record of civil dispositions for 1920 and the first three months of 1921, but the statistical clerk for the court could not supply the figures from which such a calculation could be made. The figures used were obtained through the courtesy of Frank J. Murphy, clerk of the civil branch, and the office of Charles L. Kape, assignment clerk.

murder, not related to the fluctuation in the number of cases filed, and the precipitate movement after November, 1920.

For purposes of comparison the civil list of the Common Pleas Court and cases filed is also charted (Diagram 8). The state of the Common Pleas list could be obtained only as of the beginning of each term, and not by months, so that the terms only are charted. The elimination of monthly fluctuations makes the Common Pleas list seem to follow the

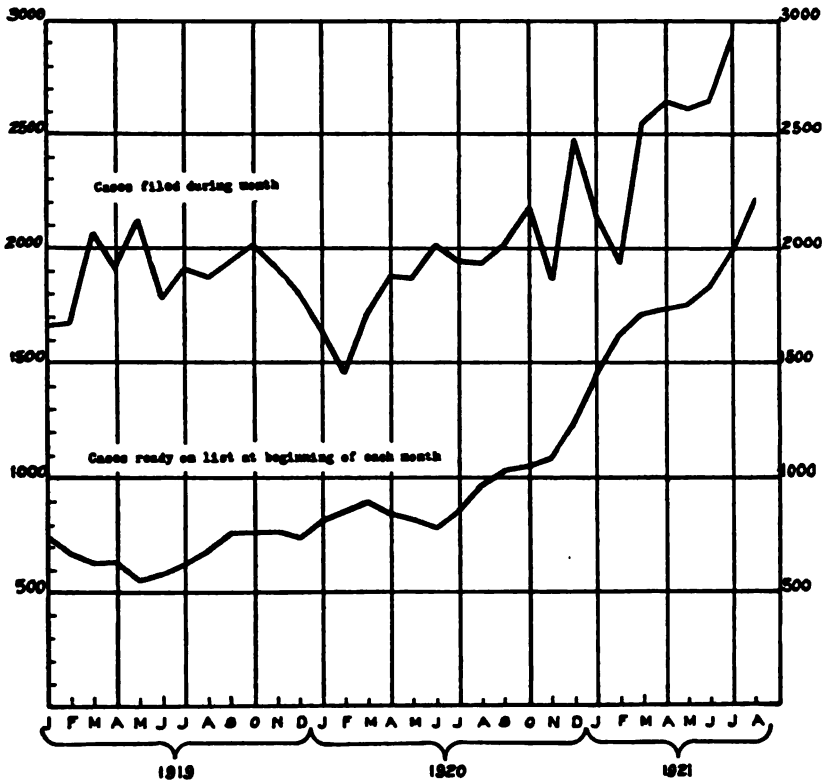


Diagram 7.—Cases ready on list compared with cases filed, Municipal Court

cases filed more closely than in the Municipal Court. It is to be observed that despite the steady increase in the number of cases, the list shows no such precipitate break as in the lower court. The higher level in the spring of 1921 is attributed partly to the assignment of more judges to the criminal division.

A correct record of the hours of attendance by the judges might also afford instructive comparisons on this point. Such a record is kept by

the bailiffs of the judges, but considerable doubt attaches to their accuracy because of the fact that Judge McGannon is recorded as attending his court for *full* months during December, January, and February, 1920-1921, when he was actually preparing for and was bodily present at two long trials involving his own liberty. Accepting the figures as they

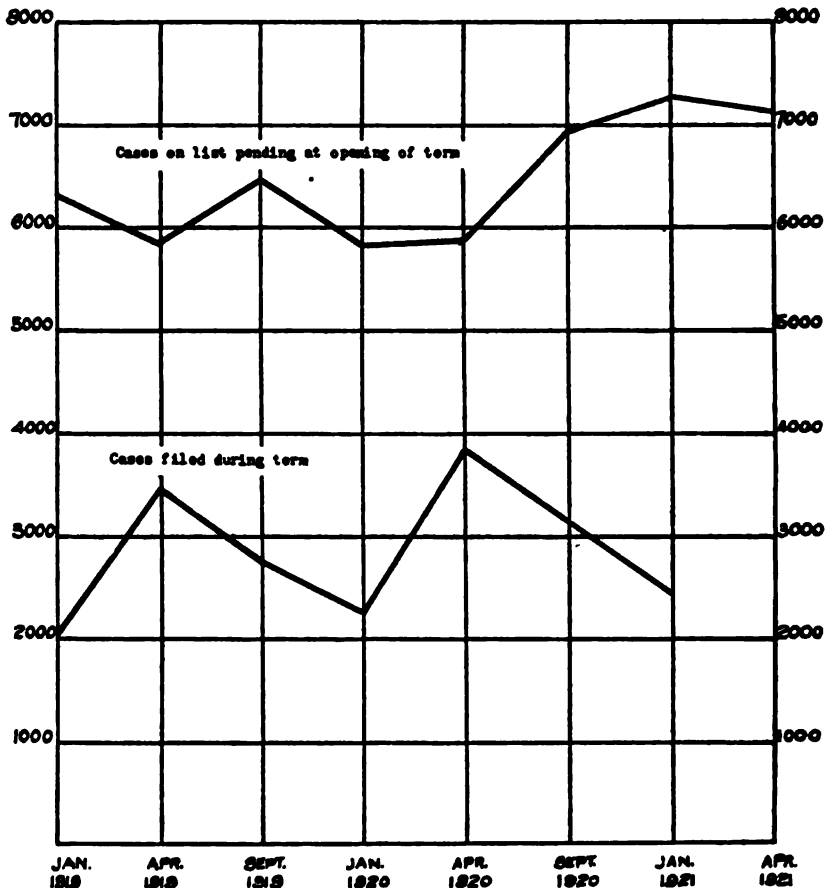


Diagram 8.—Cases ready on list compared with cases filed, Common Pleas Court

stand, however, without allowing for any tendency on the part of bailiffs to give their judges the benefit, even when there is no doubt, the record shows a substantial deficit of judicial hours worked for the months of September, October, November, December, January, and February of 1920-1921 as compared with similar preceding periods. Beginning with

1917-1918, when the records for 10 judges are first available, the figures in hours are:

<i>September-March¹</i> <i>1917-18</i>	<i>September-March¹</i> <i>1918-19</i>	<i>September-March¹</i> <i>1919-20</i>	<i>September-March¹</i> <i>1920-21</i>
7,638 hours	7,533 hours	7,767 hours	7,338 hours

The hours of attendance from 1920-21 are the lowest in the period, despite the fact that the number of cases has been rapidly increasing during this time. Compared with the next preceding year there is a falling off of 439 hours, equivalent to nearly a week and a half per judge. There is little doubt that a more accurate record would disclose a greater deficit.

FLUCTUATING POLICIES

The custom of rotating judges in the positions of presiding justice of the civil and criminal divisions of the Common Pleas Court necessarily means a fluctuating policy with regard to the promulgation and enforcement of court rules and practice. This has become of more importance since the establishment of an assignment commissioner in the criminal division in February, 1919. Before that time the lists were in the hands of the prosecutor's office, and any judge in the criminal division who happened to be approached disposed of pleas of guilty and motions to "nolle." In order to prevent "angling" for a particular judge, the Assignment Commissioner now sends such pleas and motions, when advised beforehand, to the presiding judge. This means that the policy in such matters varies with the rotating judges. There is also a great difference among judges in their supervision over the system of selecting petit and grand juries. Perhaps the greatest weakness of continually changing the directing head is seen in the enforcement of court rules; for example, Rule 21, relating to continuances for absent witnesses. The policy regarding "passing" cases (*i. e.*, putting them over for hearing at a later date) has also varied. This is of considerable importance because one of the first objects of a skilled criminal lawyer is to get his case "passed" as often as possible, in the hope of disgusting the State's witnesses and wearing out the interest of the police and prosecutor. In the September term, 1920, Judge Bernon, then presiding judge of the criminal division, stiffened up in the matter of "passing," and in the January term, 1921, Judge Allen asked for an affidavit before "passing" a case. The attorneys, however, then presented affidavits from their clients, and in the April term, when Judge Allen became presiding judge, she issued an order requiring an affidavit of due diligence by the attorney and the presence of the defendant in court before passing any case.

¹The summer months are excluded because of the vacation period.

The seriousness of laxity in passing cases is well known to everyone connected with the courts. Statistically, there seems to be a direct correlation between the length of time cases have been pending and the mode of disposition. Considering all of the criminal cases begun in 1919, we find the average time per case for different classes of disposition to be as in Table 17.

TABLE 17.—AVERAGE TIME PER CASE BY CLASSES OF DISPOSITION

Disposition	Average number days, arrest to disposition		Average number days, indictment to disposition	
	From inferior courts ¹	Original indict- ments	From inferior courts ¹	Original indict- ments
Guilty on first plea	26.1	16.4	9.8	49.4
Change of plea to guilty	62.5	26.2	42.0	44.9
Change to plea guilty lesser offense	65.6	37.7	42.2	53.2
Guilty of felony by jury	71.7	74.6	52.8	113.8
Not guilty of felony by jury	83.8	55.6	54.7	62.3
"Nolled" because of defendant's sentence or imprisonment	84.6	44.0	56.7	75.6
Dismissed or discharged on motion or demurrer	106.0	63.5	58.7	65.7
"Nolled" on all counts, no reason assigned	99.8	124.6	75.5	134.5
"Nolled" after conviction or dis- agreement	181.4	..	163.7	..
Dismissed, want of prosecution	215.0	293.3	245.0	298.3
No bill by grand jury	29.3	..	..	..
Arrest to true bill	24.4	..	..	..

These figures need little comment, since they indicate clearly the need of a sustained policy of firmness in the matter of passing. Under the present system of rotation this will never be obtained.

INABILITY TO USE PERSONNEL TO BEST ADVANTAGE

Another result of rotating is to make impossible using the abilities of the particular judges to the greatest advantage. The success of any business enterprise requires that it use its personnel in such a way as to employ the abilities thereof to the utmost and to minimize its weaknesses. The administration of justice is no exception. On the civil side, a judge who may do fairly well in tort cases or simple contract, may be beyond

¹ The column for cases coming from inferior courts is the more reliable because based upon approximately 10 times as many cases as the original indictments.

his depth in equity or in disposing of motions. The criminal side has its own requirements. It needs not so much able jurists as men of common sense and firmness, known to be unapproachable by lawyers, prosecutors, or politicians, and inspiring respect that should border on awe.

A judge may be inadequate on the civil side, and yet make a competent criminal judge. Conversely, a judge gifted in theoretical knowledge of the law may be a poor criminal judge, because of his tendency to see abstract theories and not problems of human character.

Tables 18 and 19, based upon cases begun in 1919, show how widely some of the judges vary in performance of duties on the criminal bench. Only judges disposing of at least 100 cases are included, which accounts for the omission of certain judges.

In order to interpret the figures in Tables 18 and 19 more easily, secondary tables, given in Table 20, will be helpful. These secondary tables show how the judges rank by dispositions of cases tried by them. A summary of this table is given in Table 21.

It will be noticed in Part I of Table 20 that Judge Levine leads easily in the number of cases originally pleading guilty, and that he still leads the list in Part II, followed by Judge F. E. Stevens and Judge Cull. A partial explanation of the readiness to plead guilty before these judges is seen in Part V, where the same two men are at the top of the list and Judge Cull is a close fourth. It will be noticed that Judges F. E. Stevens, Pearson, Kennedy, and Phillips lead among those accepting a plea of guilty to a lesser charge. This should be compared with Part VI, which shows the leniency of the judges toward misdemeanors, reflected in a combination of fines only, plus suspended workhouse sentences. Except Judges Levine and Cull, who led on original pleas of guilty, the first four in this list correspond closely with the first four in Part III.

In Part IV of Table 20, cases "nolled," only those cases "nolled" on all counts with no explanation are included. In this list Judge Kennedy leads as widely as Judge Levine in Part I. In February, 1920, Judge Kennedy allowed a "blanket nolle," which included over 50 cases begun in 1919. A large percentage of these cases, however, are not included here because an explanation was given, and many of them would have been "nolled" in due course even had there been no "blanket nolle." It is safe to say that Judge Kennedy would still head the list after allowing for the "blanket nolle."¹

¹Presiding judges during the term in which most of the 1919 cases were disposed of were Judges Foran, Stevens, Powell, Kennedy. One would naturally expect these judges to lead in pleas of guilty, changes of pleas, and "nolles." Judge F. E. Stevens alone is high in all of these dispositions, however.

TABLE 18.—DISPOSITION OF CASES CLASSIFIED BY JUDGES HEARING THEM¹

	All cases		All known judges		Baer		Cull		Foran		Kennedy		Levine		Pearson		Phillips		Powell		Stevens	
	Number		Number		Number		Number		Number		Number		Number		Number		Number		Number		Number	
1. Total disposed of in Common Pleas Court	2,539		2,340		189		426		141		297		142		104		163		345		412	
2. On plea of defendant	1,215		1,209		62		249		77		89		113		45		48		185		277	
3. Not on plea of defendant	1,324		1,131		127		177		64		208		29		59		115		160		135	
4. Subdivision of 2:																						
a. Original plea guilty	428		426		1		134		42		6		81		2		6		56		94	
b. Original plea guilty lesser offense	22		21		..		3		1		..		2		..		..		3		12	
c. Original plea not guilty changed to guilty	550		549		42		79		21		54		24		33		26		99		124	
d. Original plea not guilty changed to guilty lesser offense	193		192		15		27		12		28		6		10		14		23		44	
e. Others	22		22		4		6		1		1		..		..		2		4		3	
5. Subdivisions of 3:																						
a. "Nolled" for all causes	536		528		28		69		14		166		8		25		40		65		86	
b. Not arraigned	57		..		..		..		..		..		..		..		..		..		..
c. Bail forfeited	33		..		..		..		..		..		..		..		..		..		..
d. Dismissed or discharged	31		6		..		..		..		..		..		3		1		..		..
e. Trial, not guilty of felony	215		212		41		37		12		22		10		12		24		36		10	
f. Trial, not guilty of misdemeanor	8		8		..		..		..		..		..		..		..		8		..	
g. Trial, guilty of felony	293		289		43		53		27		15		6		14		42		38		34	
h. Trial, guilty of misdemeanor	74		74		14		17		8		5		4		4		6		11		3	
i. Others	77		14		1		1		2		..		1		1		2		2		2	
6. Subdivisions of 5a:																						
a. "Nolled" after commitment for insanity	2		2		..		1		..		..		..		..		..		1		..	
b. "Nolled" after new trial granted	13		13		1		..		..		1		..		4		1		1		1	
c. "Nolled" after jury disagreement	6		4		1		1		..		..		..		..		..		..		..
d. "Nolled" after plea guilty on other counts	6		6		..		6		..		..		..		..		..		..		..
e. "Nolled" after conviction on other counts	5		4		..		3		..		..		..		..		1		..		..
f. "Nolled" after transfer to Juvenile Court	21		21		..		1		..		11		..		..		1		4		2	
g. "Nolled" because defendant already sentenced	84		82		1		16		..		26		..		2		2		28		7	
h. "Nolled" on all counts	399		396		25		41		14		128		8		19		35		31		75	

¹ Only those judges are named who had more than 100 cases.

TABLE 19.—CASES CLASSIFIED BY KINDS OF SENTENCES, SUSPENSION, AND JUDGES HEARING THEM ¹

	All cases	All known judges	Bear	Cull	Foran	Kennedy	Levine	Pearson	Phillips	Powell	Stevens
	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number
All cases	2,539	2,340	189	426	141	297	142	104	163	345	412
No sentence indicated	937	749	70	98	28	187	19	40	65	111	97
All sentences	1,602	1,591	119	328	113	110	123	64	98	234	315
Sentences executed	1,251	1,243	94	245	93	104	85	46	88	195	219
Sentences suspended	351	348	25	83	20	6	38	18	10	39	96
Felony sentences	904	897	73	222	69	39	62	30	62	139	165
Sentences executed	663	658	57	155	58	33	43	17	60	112	97
Sentences suspended	241	239	16	67	11	6	19	13	2	27	68
All misdemeanor sentences	698	694	46	106	44	71	61	34	36	95	150
Sentences executed	588	585	37	90	35	71	42	29	28	83	122
Sentences suspended	110	109	9	16	9	..	19	5	8	12	28
Fines and costs only	297	295	10	49	9	36	38	19	8	31	61
Sentences executed	275	274	9	44	8	36	28	19	8	28	60
Sentences suspended	22	21	1	5	1	..	10	..	..	3	1
Imprisonment only	249	248	13	37	22	9	12	5	16	59	67
Sentences executed	193	192	9	30	20	9	5	4	8	52	48
Sentences suspended	56	56	4	7	2	..	7	1	8	7	19
Fine and imprisonment	152	151	23	20	13	26	11	10	12	5	22
Sentences executed	120	119	19	16	7	26	9	6	12	3	14
Sentences suspended	32	32	4	4	6	..	2	4	..	2	8

¹ Only those judges are named who have had more than 100 cases.

TABLE 20.—RANK OF JUDGES BY PERCENTAGES OF SPECIFIED DISPOSITIONS IN CASES TRIED BY THEM

I Original pleas of guilty		II Total pleas of guilty		III Change of plea to guilty of lesser offense	
	Per cent.		Per cent.		Per cent.
1. Levine	57.1	1. Levine	79.6	1. Stevens	10.7
2. Cull	31.5	2. Stevens	67.3	2. Pearson	9.6
3. Foran	29.8	3. Cull	58.5	3. Kennedy	9.5
4. Stevens	22.8	4. Foran	54.6	4. Phillips	8.6
5. Powell	16.2	5. Powell	53.6	5. Foran	8.5
6. Phillips	3.7	6. Pearson	43.3	6. Baer	7.9
7. Kennedy	2.0	7. Baer	32.8	7. Powell	6.6
8. Pearson	1.9	8. Kennedy	30.0	8. Cull	6.3
9. Baer	0.5	9. Phillips	29.5	9. Levine	4.2
IV Cases "nolled" on all counts		V Suspended sentences, felonies, and misdemeanors		VI Misdemeanors—combination of fines only and suspended workhouse sentences	
	Per cent.		Per cent.		Per cent.
1. Kennedy	43.1	1. Levine	30.8	1. Levine	77.1
2. Phillips	21.5	2. Stevens	30.5	2. Pearson	70.7
3. Pearson	18.3	3. Pearson	28.2	3. Stevens	58.7
4. Stevens	18.3	4. Cull	25.3	4. Cull	56.7
5. Baer	13.2	5. Baer	21.0	5. Kennedy	50.7
6. Foran	9.9	6. Foran	17.7	6. Phillips	44.4
7. Cull	9.6	7. Powell	16.7	7. Powell	42.1
8. Powell	9.0	8. Phillips	10.2	8. Foran	38.6
9. Levine	5.6	9. Kennedy	5.5	9. Baer	39.1

VII

Cases Tried by Jury

	Per cent. all cases	Per cent. found guilty		Per cent. all cases	Per cent. found guilty
1. Baer	52.0	58.3	6. Cull	25.2	65.5
2. Phillips	44.2	66.7	7. Kennedy	14.2	47.9
3. Foran	33.4	74.6	8. Levine	14.1	49.6
4. Pearson	28.8	60.1	9. Stevens	11.4	78.9
5. Powell	26.9	52.8			

It is interesting to note that generally the sequence in Part IV of Table 20 is the inverse of Part II. Also, the first four who lead the "nolles"¹

¹ It may be indicative of the character of the work required of a presiding justice that Judges Powell, Kennedy, and Stevens were among those trying the smallest percentage of cases. Judge Foran, the remaining judge who presided during this period, had fewer 1919 cases than the others.

lead the changes of "plea to guilty of lesser offense" in Part III, although the order is shifted about, Judges Stevens and Pearson changing places with Judges Kennedy and Phillips.

Judges Baer and Phillips lead easily in the percentage of cases tried, and Judges Kennedy, Levine, and Stevens show the smallest number disposed of by verdict of a jury. The percentage of convictions after trial is also given, but here the basic figures become so small in some instances that conclusions are hardly justified. The results, however, would probably coincide with the opinion of the bar, that a jury before Judges Kennedy or Levine is more apt to bring in a verdict favorable to the defendant than before Judges Stevens or Phillips.

TABLE 21.—SUMMARY OF RANKS OF EACH JUDGE IN THE SEVEN DISPOSITION CLASSES OF TABLE 20

	Original pleas of guilty	Total pleas of guilty	Changed to plea guilty lesser offense	"Nolled"	Sentence sus- pended	Fines only and sentence to work- house suspended	Tried by jury
Baer	9	7	6	5	5	9	1
Cull	2	3	8	7	4	4	6
Foran	3	4	5	6	6	8	3
Kennedy	7	8	3	1	9	5	7
Levine	1	1	9	9	1	1	8
Pearson	8	6	2	3	3	2	4
Phillips	6	9	4	2	8	6	2
Powell	5	5	7	8	7	7	5
Stevens	4	2	1	4	2	3	9

Further comment on the characteristics of the judges is rendered unnecessary by the figures themselves. It is sufficient to know that in so far as the group of 1919 cases may be analyzed, there are wide variations among the individual judges. Moreover, there are characteristics which are not portrayable in statistics, but of which a Chief Justice would be cognizant. Judges with *a priori* theories about crime and its treatment, judges too accommodating to the wishes of prosecuting attorneys or professional criminal lawyers, judges with settled bias against different classes of witnesses, judges who try cases for the newspapers, should be, so far as possible, limited in their service on the criminal division.

It would be an unwise procedure, however, to make permanent assignments to the criminal division. Experience has shown that such a practice tends to make the judges "bloodthirsty or mushy." This is the principal weakness in the plan of the Detroit Criminal Court. Nor

should future assignments be announced prematurely, thus encouraging lawyers and even prosecutors to "string it along until so-and-so gets on the bench." A Chief Justice with full power to make assignments could not only select the best adapted material, but also break up any such attempted liason.

ASSIGNED COUNSEL

In Cleveland assigned counsel play a large part, quantitatively, in the administration of justice. Counsel appointed to defend an indigent person receives \$10 for preparation of the case, and \$10 per day in court up to \$50. A larger sum is allowed in capital cases. In 1920 assigned counsel were paid the sum of \$32,500.¹

There is no fixed policy with respect to appointing counsel. At the opening of the term, lawyers desiring such practice give their cards to the judge. Formerly the prosecuting attorney recommended lawyers, but under Samuel Doerfler an order was issued forbidding this practice. As a rule, very young attorneys or incompetent older men are appointed, because successful lawyers do not seek the business. In important cases the judges seek to appoint abler men, and some eminent lawyers have served on such appointments from a spirit of professional duty. In the usual run of cases, however, the appointing of counsel is not taken very seriously. "It doesn't make much difference," remarks one judge, "the defendants are usually guilty anyway."

It is apparent that such appointments must to some extent become a reward to habitués of the court-room. Among the 1919 cases, exclusive of instances in which more than one counsel appeared, 114 were appointed once, 31 twice, 25 three times, 14 four times, 9 five times, 7 six times, 3 seven times, 2 eight times and 1 nine times. One hundred and seventy appointed lawyers appeared a total of 251 times, compared with 36 who appeared a total of 189 times.

There is an impression in Cleveland that the appointed counsel usually induces his client to plead guilty and pockets his modest fee for the persuasion. This apparently is not true. Considering the 1919 group of cases, 40.7 per cent. of all cases of appointed counsel pleaded guilty, as compared with 41.7 per cent. of cases of privately retained attorneys. Less than 1 per cent. of such cases pleaded guilty on the first plea, as compared with 2.6 per cent. of the retained lawyers, but this may be because the court protected such unrepresented defendants as seemed unwilling

¹ This may be compared with \$41,072.76 allowed the prosecutor's office for salaries in the same year. The prosecutor's office is responsible for at least six times as many cases as the assigned counsel, in addition to handling the civil business of the county.

to plead guilty upon the arraignment. In the cases of assigned counsel, 12.7 per cent. were allowed to plead guilty to a lesser offense, as compared with 9.3 per cent. of the private attorneys.

TABLE 22.—CASES CLASSIFIED BY DISPOSITION AND BY COUNSEL APPOINTED, NOT APPOINTED, OR UNKNOWN

Dispositions	All cases	Coun- sel un- known	Per cent.	Ap- pointed	Per cent.	Not ap- pointed	Per cent.
Total cases	2,539	754	100.0	527	100.0	1,258	100.0
Total pleas of guilty	1,215	474	62.8	216	41.0	525	41.7
Original plea of guilty	428	393	52.1	2	0.4	33	2.6
Original plea of not guilty changed to plea of guilty	550	41	5.4	142	26.9	367	29.2
Original plea of not guilty changed to plea of guilty of misdemeanor	193	8	1.1	68	12.9	117	9.3
Other pleas	44	32	4.2	4	0.8	8	0.6
Total disposed of by trial	590	18	2.4	193	36.6	379	30.1
Guilty of felony after trial	293	11	1.5	118	22.4	164	13.1
Guilty of misdemeanor after trial	74	3	0.4	18	3.4	53	4.2
Not guilty of felony after trial	215	4	0.5	57	10.8	154	12.2
Not guilty of misde- meanor after trial	8	..	..	..	..	8	0.6
"Nolled" on all counts	399	83	11.0	61	11.6	255	20.3
All others	335	179	23.8	57	10.8	99	7.9

Except in the matter of pleas of guilty, however, the retained lawyers show much better results.¹ The assigned lawyers tried out 37 per cent. of all their cases, and acquitted 29 per cent. of all tried; retained counsel tried 30 per cent. of all their cases and acquitted 42 per cent. of all tried. Assigned counsel succeeded in having 11.6 per cent. of all cases "nolled," as compared with 20.3 per cent. of retained counsel. Of those sentenced for felony, assigned counsel secured a "bench parole" for 19 per cent.; retained counsel, for 30 per cent. Of those sentenced for misdemeanor, assigned counsel secured suspended sentence for 12.5 per cent., retained counsel for 14.7 per cent.; assigned counsel secured 14.3 per cent. money fines, as compared with 44.1 per cent. money penalties by the privately retained lawyers.

¹ This is purely on a quantitative basis, without determining—what, of course, could not be ascertained—whether in fact indigent defendants are to a greater extent than paying clients guilty defendants.

Tables 22 and 23 give the basic figures for assigned and retained lawyers. In the first table the cases having no counsel are also given, but they afford no comparable information, as may be seen. Defendants who have no counsel consist chiefly in those who admit guilt or have not been arrested.

TABLE 23.—SENTENCES CLASSIFIED BY EXECUTED AND SUSPENDED SENTENCE AND BY COUNSEL APPOINTED AND NOT APPOINTED

	Counsel appointed		Counsel not appointed	
	Total	Per cent. of whole	Total	Per cent. of whole
Total cases	527	100.0	1,258	100.0
No sentence indicated	170	32.3	507	40.3
Total sentences	357	67.7	751	59.7
Total sentences suspended	60	11.4	170	13.5
Total sentences executed	297	56.3	581	46.2
Total sentenced for felony	246	46.7	377	30.0
Total sentences suspended, felony	47	8.9	115	9.2
Total sentences executed, felony	199	37.8	262	20.8
Total sentenced for misdemeanors	111	21.0	373	29.7
Total sentences misdemeanors suspended	14	2.6	55	4.4
Total sentences misdemeanors executed	97	18.4	318	25.3
Total misdemeanors sentenced to fine only	15	2.8	165	13.1

The question of adequate representation for the indigent defendant or litigant is of considerable importance if democratic government is to succeed. Undoubtedly the free use of the appointing power places the poor defendant in a much more favorable position in the Cuyahoga Common Pleas Court than in many other courts throughout the country. He is not, at least, compelled to sell his last article of value or deprive his family of necessities in order to obtain what in theory is not the subject of purchase. The service which the state provides for him, however, is evidently inferior, and to some extent goes to crumb-gatherers. For this service the State pays a sum large enough to retain the services of an adequate firm of competent attorneys. The establishment of a Voluntary Defender's office is recommended, under the joint supervision of a committee of the judges and of the Bar Association. No statute would be necessary, the only requisite being sufficient confidence in the organization for the courts to assign cases to it. This matter should receive the careful consideration of the Common Pleas judges and the Bar Association.

BAIL BONDS

Owing to the recent establishment of a bail bond commissioner,¹ it is unnecessary to discuss conditions which have hitherto prevailed. From our investigation, however, it may be stated that the professional bondsman has practically no existence in the Common Pleas Court. Past abuse was connected mainly with collecting forfeited bonds, the responsibility for which rests chiefly on the prosecutor and not on the court.

It would be a wholesome practice, however, if the court inquired into a prisoner's previous record before fixing bail in a felony case. The practice of letting professional criminals out on moderate bail and with questionable bondsmen is inviting danger to the community.² This has become exceptionally serious where the defendant is out on bail pending a bill of exceptions after conviction, considered in the chapter on appeals.

The worst feature of the bail situation is not that in a few serious cases the defendant jumps bail and his surety is not compelled to pay. Considerably more demoralizing in its effects is the use of bail to secure the defendant's liberty while his lawyer attempts to wear out the State's case by delay. Jail cases are quite properly tried first, so that a defendant on bail starts off with an opening wedge of delay. Under the conditions in which the criminal law had its rise, the right to bail was of prime importance, since months might elapse between arrest and convening of the court. Under the slow-moving Cleveland system bail is still most important because of unnecessary delays incident to it, but the defendants have turned this "shield into a sword." Under a system where the defendant in the usual case would be tried within a week after arrest or information against him, the importance of bail would fade into a trifle. Really to eliminate the abuse of bail, therefore, fundamental changes must be made in the system, to insure the swift movement of the course of justice.

One judge has called attention to a peculiar phase of the bail question—the practice of jailing the prosecuting witness in a robbery or larceny

¹ G. C., Sec. 13523-1, 13524-1, 13550-1, 13529-1. A feature of the act is that in suits for penalties it takes away from the court all power to render a judgment less than the full amount of the bond, except where the principal has been surrendered or arrested.

² A typical case is that of a professional shoplifter who, on December 6, 1919, stole two silk dresses valued at \$200 from the May Company, and a Hudson seal coat valued at \$525 from the Lindner Company. She was let out on bail totaling \$2,000 and jumped it twice, the last time permanently. Suits are still pending against the bondsman. Her associate in the offenses was fined \$5.00 in one case and "nolled" on the other. She was represented by a typical political criminal lawyer.

case in default of bail. The statute authorizes such detention of important witnesses where adequate bail cannot be furnished. In some cases, no doubt, it is necessary to confine State's witnesses, especially where the witnesses are indifferent or unfriendly. It is ridiculous, however, to confine the complainant in a robbery case. Cases have been called to our attention where the complainants have been in jail for over a month, and where a man robbed of a few dollars was imprisoned 106 days while the robber—subsequently convicted—was at liberty on bail furnished by friends. This is "looking-glass justice." One judge has mitigated the hardship in such cases by directing the assignment commissioner to place them at the head of the trial list. The only real cure, however, is a greater exercise of common sense on the part of the committing magistrate.

THE CLERK'S OFFICE

The Clerk of Courts, Edmund B. Haserodt,¹ operates the most satisfactory office connected with the administration of criminal justice in Cleveland. Much of the information needed by the survey was obtained from the records in this office or with the assistance of the clerk's courteous staff, notably John J. Busher, chief deputy in the criminal division, and Mrs. Elizabeth Graham, secretary to Mr. Haserodt.

The chief records kept are: (a) A docket in ledger form with a page for each case, opened immediately on receipt of transcript from the inferior court;² (b) a journal containing notes of the court's action each day, kept chronologically; (c) daily calendars of the judges from which the other records are made up; (d) a "conviction book," containing ample notes on convictions by terms; (e) a record of indictments; (f) a bail bond record. An alphabetical index is maintained referring to the docket number of the case, and a brief summary is kept in the original file papers.

The most comprehensive record of a case is kept in the docket, to which reference is usually had for information. Since this is the only place where anything like a full history can be obtained, it is suggested that this docket be made complete and include information not strictly within the clerk's jurisdiction. At present only the names of appointed counsel are entered, but the names of all counsel should appear. When-

¹ Mr. Haserodt's term expired August 1. Mr. Busher became bail bond commissioner July 26.

² This docket is of the general nature recommended for the criminal branch of the Municipal Court, but much more extensive than is necessary for the latter.

ever the court takes any action, it is suggested that the names of the judge and the prosecutor responsible be also entered in the docket. At present the docket ends with sentence, or other disposition,—unless there are exceptions,—but the history might easily be extended to cover subsequent events, such as a clear notation that the man was received at the workhouse, and when he was paroled therefrom. Where bail is forfeited, a reference might be made to any suits to collect the bail. This, of course, would involve more work, but much time might be saved by eliminating the journal, which seems to be a useless duplication. There should be some simple method devised for following cases in which several defendants are involved, since the process of entering the steps consecutively, regardless of particular defendant, tends to make the record confusing. Also, the appearance of the docket might be much improved by typewriting the entries.

The most serious handicap to efficiency is the division of the office between the two court buildings, thus scattering the records and causing delay and misunderstanding. This is most clearly seen in cases of convictions affirmed by the Court of Appeals, where weeks sometimes pass before a mandate reaches the old court-house. This phase of the work is more fully considered under appeals.

The Clerk of Courts is elected every two years, and it is customary for a new clerk to discharge practically all the employees and engage a new staff. Obviously, the short term and spoils system are bad for the continuous effective administration of this office. The term should be lengthened if the office is not made appointive and a tradition established for retaining efficient employees. At present these employees are not under the civil service, but Mr. Haserodt has attempted to comply with the requirements of the civil service both in selecting employees and in the matter of payroll.

THE ASSIGNMENT COMMISSIONER

Two years ago this office was created to take the management of the list out of the prosecutor's office. Under the capable direction of the assignment clerk, Archie J. Kennel, the office has given considerable satisfaction to those who sponsored the change. The Common Pleas Court has facilities for disposing of criminal cases with surprising promptness, if the practice of "passing" and continuing was properly curbed. The office of Assignment Commissioner may be especially useful in notifying counsel and witnesses, thus saving much of the time ordinarily lost by waiting around the court-house for cases to be reached. Mr. Kennel has devised records which enable him to obtain prompt informa-

tion respecting the judges or attorneys acting in a particular case, and these records were of much assistance in the survey.

RECOMMENDATIONS

The following is a summary of recommendations pertaining to the Common Pleas Court:

1. The establishment of a permanent executive head of the court with a modern court organization.
2. Certain physical changes, particularly the holding of all sessions under one roof; the keeping of all records in one place; facilities for seating spectators, and a rule forbidding any one not a lawyer or court officer to stand while court is in session.
3. The adoption of such formalities as will add to the dignity of the court-room, and the enforcement of due decorum by the court officers.
4. The elimination of the custom of "passing cases" except for urgent reasons.
5. The establishment of a Voluntary Defenders' office under the joint supervision of the judges and the Bar Association.
6. Modification of the custom of jailing prosecuting witnesses.
7. Greater care in allowing bail to professional and habitual criminals.
8. Certain detailed changes in methods of keeping records.

CHAPTER VII

THE COURT OF APPEALS

HISTORY AND JURISDICTION

THE Court of Appeals, created by constitutional amendment in 1912, inherits through the circuit courts established by the constitutional amendment of 1883, which in turn succeeded the district courts established by the constitution of 1851. These district courts were originally established to relieve pressure on the Supreme Court, and the present Court of Appeals still holds this position. It has no original criminal jurisdiction, but has final appellate jurisdiction in all matters except felony cases and cases of public or general interest. Inasmuch as the Supreme Court cannot be required to pass on the sufficiency of evidence,¹ except where it has original jurisdiction, and in any case must grant leave before a petition in error may be filed,² the jurisdiction of the Court of Appeals, even in felony cases, is practically final.³

Until recently the appellate procedure in misdemeanor cases in the Municipal Court was first to the Common Pleas Court, thence to the Court of Appeals. A petition in error may now be filed immediately in the Court of Appeals, without the intermediate review by the Common Pleas Court.⁴ Another change which ought to expedite appealed cases is the passage of the Boylan Bill in April, 1921, constituting Cuyahoga County as a separate district and forming a new district out of the counties with which it was formerly joined.

The judges of the Court of Appeals, of which there are three for each district, are organized with headquarters at Columbus, make their own rules, and determine what opinions shall be published. The judges of each district make rules to fit local needs, as, for instance, the rule promulgated by Judges Washburn, Vickery, and Ingersoll during 1921,

¹ G. C., Sec. 13751.

² G. C., Sec. 13751.

³ There is a right of appeal to the Supreme Court where the constitutionality of a statute is involved. G. C., Sec. 13571.

⁴ G. C., Sec. 1579-36. See *Luthringer v. State*, 11 O. App. 294.

automatically advancing criminal cases for hearing.¹ Admirable regulations are the constitutional provision requiring concurrence of all judges of the court to reverse a judgment upon the weight of the evidence,² and the statutory provision for appeal by the State to establish a precedent in criminal cases.³

The Court of Appeals has a monopoly in Cuyahoga County of the dignity which is proper and necessary to a court. It has escaped the degradation which has pursued the other courts of the county, partly because of the nature of its business and partly because of its ample and impressive physical appointments.

DISPATCH OF BUSINESS

In the dispatch of criminal business the court would probably compare favorably with similar courts in other jurisdictions, although in view of the universal delay in handling appeals this should not be cause for satisfaction. Among all cases begun in the Common Pleas Court in 1919, 39 felony cases were taken to the Court of Appeals on error, averaging seven months and ten days between the filing of the petition in error and the decision of the Appellate Court. The court seems to dispose of cases from inferior criminal courts with more speed, however, since 11 petitions from inferior courts entered in the Common Pleas Court in 1919 were reviewed by the Court of Appeals in the same calendar year as the filing of petitions in that court. Of the seven cases of liquor law violation heard in January, 1921, by the Municipal Court and taken to the Court of Appeals on error, all were disposed of before April 19, 1921. That there must have been severe congestion in the handling of civil cases, however, is evidenced by the passage of the Boylan Bill. It remains to be seen whether this cutting down of geographic jurisdiction will enable the court to expedite felony cases as well.

RESULTS OF APPEALED CASES

It may be said that the Court of Appeals is hardly a factor in the breakdown of the administration of criminal law. Of the 39 felony cases appealed, 25 resulted in convictions affirmed, six were dismissed by the plaintiffs-in-error or by the court, and seven were reversed or discharged. Among all cases begun in the Common Pleas Court in 1919, less than

¹ The power to make such a rule is conferred in G. C., Sec. 1523.

² Constitution 1912, Article IV.

³ G. C., Sec. 13764. Of course, a defendant once acquitted may not be tried again regardless of the outcome of the State's petition.

three-tenths of 1 per cent. moved nearer to freedom by virtue of a petition in error, and of all convicted of felony after trial, only 2.4 per cent. succeeded in this way. The chief ground for reversal was that the verdict was against the weight of evidence. All the petitions in the 11 misdemeanor cases resulted in affirmed convictions. Of the seven cases of liquor law violation, the Court of Appeals reversed five for error of the police court judges. Five of these liquor cases had been tried before Judge F. L. Stevens during his campaign against such offenders, and four of these were reversed.

FAILURE OF CLERK'S OFFICE TO ACT PROMPTLY

The Clerk of Courts is the same for the eighth district Court of Appeals as for the Common Pleas Court. This office has already been considered in connection with the latter court. It is, however, in the handling of proceedings on petition in error in the Court of Appeals that the clerk's office is chiefly defective. A comparison of the dockets of the Court of Appeals with those of the Common Pleas Court shows that in the 32 felony convictions affirmed there is an average spread of twenty-four days between the date of the decision as noted in the former record and the date as noted in the latter. In one case the spread was eighty days and in two cases over sixty. This means that several weeks or even months may elapse after the upper court has affirmed conviction before the sheriff receives a capias from the clerk of the criminal branch of the Common Pleas Court. The gap is probably due to the fact that no successful effort has been made to overcome the physical gap between the main office of the clerk on the lake front and the criminal branch on the square. When the Court of Appeals affirms a conviction, the following steps occur: the bailiff of the Court of Appeals takes the opinion to the Clerk of Courts, who makes out the mandate and journalizes the entry; the case is then sent from the mandate clerk to the cost clerk, from the cost clerk to the filing clerk, and from the latter to the clerk of the criminal division, who makes out a capias for the sheriff.

It is obvious that where so many steps and so many persons are involved, delays and errors are apt to occur in conveying to the sheriff official notice of the action of the Court of Appeals. In the case of Rosario Spinello, No. 9211, Common Pleas Court, the mandate was lost entirely and the defendant, whose conviction for manslaughter was affirmed by the Court of Appeals on January 14, 1918, was not arrested by the sheriff until a year later. Mere accident resulted in the discovery that the convicted man was still at liberty. Spinello knew that his conviction had been affirmed, but naturally preferred to remain at liberty on bail pending action of the authorities.

BAIL BONDS PENDING ERROR

Not all defendants remain as honestly quiescent as Spinello, however. For instance, among the 39 felony cases mentioned above, there is John Loggio, No. 17336, who was convicted of shooting with intent to wound on October 29, 1919; filed a petition in error, but dismissed the petition on his own motion May 3, 1920. The Common Pleas Court noted this action on July 22 and issued a *capias*, but in the meantime Loggio had fled to parts unknown. Similarly Meyer Goldberg, No. 17448, convicted of robbery on February 5, 1920, had his conviction affirmed January 10, 1921. The Common Pleas record shows the following: "1-31-21—Judgment of Court of Common Pleas affirmed; 2-25-21—Bond forfeited, *capias*." Goldberg was still at large when the study was made. A curious case is that of William Allen, No. 15874, whose conviction was set aside by the Court of Appeals, but who jumped his bail despite this fact, probably before the upper court rendered its decision. Allen is still at liberty, although his case would probably be "nolled" if he returned. In two other cases of the same group the last entry is "*capias*" issued: Anton Kabel, No. 15327, and Joseph McLaughlin, No. 15303. It is probable, however, that these defendants were subsequently apprehended.

In other cases there was apparently an attempt to jump bail, judging by the time necessary to place the defendant in custody after the *capias* was authorized. In view of the fact that of the 39 cases appealed seven were reversed and at least half of the remainder were in custody pending the proceedings in error, this proportion of actual and attempted bail jumping is quite large.

Other recent cases are Julius Pettianto, No. 18178, convicted of auto-stealing, whose petition in error was dismissed November 22, 1920, for want of preparation, such action noted by the Common Pleas Court December 8, 1920; bond forfeited and *capias* issued December 23, 1920; Harry Cohen, No. 14746, convicted of pocketpicking May 6, 1919; conviction affirmed December 24, 1919; noted by Common Pleas Court January 2, 1920; bond forfeited January 14, 1920. In none of the bail forfeiture cases had any money been collected on the bail bonds at the time of this study.

RECOMMENDATIONS

It is for the new Clerk of Courts to solve the problem of organizing his office so that the clerk of the criminal division receives instant notification to issue a *capias* upon the action of the Court of Appeals in affirming a conviction. So far as possible the records should be kept in one place, and steps between the handing down of the opinion of the

upper court and the order to issue a *capias* should be eliminated or postponed. Other suggestions have been made, namely, that the defendant must be in court when the Court of Appeals announces its decision, and that the decision shall not be made public until a *capias* is in the hands of the sheriff.

If some such procedure were adopted, it would no longer be possible for a defendant to wait until his last chance was clearly gone and then have ample time to put his house in order before leaving the State. It would not, however, prevent a defendant from jumping bail before the decision is announced, or from deliberately abusing the appeal process in order to gain time. From the number of petitions dismissed on motion of the plaintiff-in-error, or for lack of preparation, it is obvious that there is such abuse. One notorious automobile thief participated in a most atrocious double murder and payroll robbery while his attorney was considering the advisability of filing a petition in error after conviction for auto-stealing.

A step which would reduce bail jumping and abuse of appeal is the refusal of bail to a defendant after conviction of a crime professional in its nature, like auto-stealing, robbery, pocketpicking, etc. The facts of each case must determine the discretion of the court. Here, however, there is a legal difficulty. G. C., Sec. 13698 (108 O. L. 18, 1919), provides as follows:

"When a person has been convicted of any bailable offense * * * and gives notice in writing to the trial court of his intention to file or apply for leave to file a petition in error, such court * * * *may*, and if such person is not confined in prison *shall*, suspend execution of sentence or judgment for such fixed period as will give the accused time to prepare and file * * * a petition in error, and such suspension shall be upon condition that the accused enter into a recognizance with sureties * * * ."1

G. C., Sec. 13700, provides in effect that a defendant already out on bail need file no further recognizance pending proceedings in error. Formerly the question of bail after conviction was discretionary with the court in all cases. The compulsion placed upon the court where the convicted defendant is already at liberty is a mistaken policy, and should be removed at the next session of the legislature.

¹ The italics are our own.

CHAPTER VIII

SUSPENDED SENTENCES, "NOLLES," AND PLEAS OF GUILTY TO LESSER OFFENSE

WE have already seen that about 20 per cent. of all felony cases are nolle-prossed in the courts, that over 8 per cent. of those indicted are allowed to plead guilty to an offense less serious than the indictment, and that of those convicted, from 10 to 30 per cent. receive suspended sentences. With respect to offenses less than felonies in the Municipal Court, about 7 per cent. are "nolled" and 35 per cent. of those convicted receive suspended sentences. One would suppose that in releasing defendants on such a wholesale scale the court must realize what it is doing.

Yet Justice acting with veiled eyes is never better exemplified than by the judge attempting to handle one of these questions.¹ Obviously, the judge should be in possession of adequate information before he can act with fairness to the defendant or the community, yet under the existing system it may be only by chance that he learns the true situation.

Let us suppose a man convicted of felony and given an indeterminate sentence in the Ohio State Reformatory. Under Sections 13706-13715 of the code the judge may "parole" this defendant if he is a first offender.² He is importuned by the defendant's lawyers and besieged by his relatives and friends. Evidence of previous good character is supplied in quantity, and pledges of good behavior are heaped upon the judge. To whom shall the judge turn for a disinterested recital of the true situation?

¹ The process of suspending sentence and placing the defendant under surveillance is known in most jurisdictions as "probation." The discussion in this chapter extends as well to suspending workhouse sentences as to "paroling" more serious offenders.

² "In all prosecutions * * * where the court has power to sentence * * * and it appears that the defendant has never before been imprisoned for crime * * * said court may suspend execution of sentence and place the defendant on probation. * * *"

Sec. 2 excludes certain crimes from the operation of this statute, and Sec. 3 gives the court power to suspend execution of sentence at *any time* in jail or workhouse cases.

POLICE AND PROSECUTORS NOT BEST ADVISERS TO THE COURT

Police officers who aided the prosecution, if such can be found, may be helpful, but they know only part of the story, often have a bias, and are not trained to the difficult task of appraising the possible results of treatment outside of an institution. Moreover, police witnesses vary in different cases so that the court must rely on many advisers with many different standards of judgment and varying outlook upon life.

The only other source of information is the prosecuting attorney, who has the advantage of being easily accessible and known to the judge. Here again there is the possibility of bias against the prisoner, often engendered by the heat of a contest, of favoritism because of friendship for the defendant's lawyer, or because of political influence. Even if the prosecutor is wholly impartial, as he often is, he usually knows only those facts necessary to a conviction, and has not burdened his mind with those "imponderables" necessary to the formation of a judgment on the question of probation. Even the previous record of the prisoner, sent by the Bureau of Criminal Identification to the prosecutor's office, containing merely such bald facts as arrests and convictions, rarely reaches the judge, and perhaps is not even known to the particular prosecutor in charge.¹

PUBLIC CLAMOR FOLLOWED

In the old game of "Donkey" the blindfolded player often relies upon the cheers of the onlookers to guide him to the spot where he can pin the animal's tail in its proper place. In like manner the judges, deprived of the opportunity of forming their own judgment upon all the facts, are often prone to follow the clamor of the press and public. When the cry is "thumbs up," paroles issue in abundance, but when it is "thumbs down," both the good and the wicked travel the same road. When Tom L. Johnson was mayor, a generous humanitarianism not adequately guided by science in the handling of offenders began which did not reach its sentimental climax until several years ago. The Chief of Police started to release without trial all first offenders in certain minor crimes, becoming thereby nationally known as "Golden Rule" Kohler.

¹ Writing to a parole officer under date of December 20, 1920, the prosecutor's office says: "These two boys broke into a confectionery store and helped themselves to about \$112 worth of cigars and smoking materials. The court accepted a plea of guilty to petit larceny in the case, hence their sentence to workhouse. There is no previous record against these boys." The "two boys" mentioned were in fact two aliases of the same criminal, whose amazingly long police record is No. 10238, printed on page 11 of this report.

The idea spread from police to judge, from misdemeanor to felony, until, as an editor of one of the Cleveland papers put it, "a lawyer regarded it as a personal insult if a judge sent his client away." Under the Davis régime this false idealism was perverted into good-fellowism, and the damage was done. Cleveland became known as an "easy town," which it certainly was.

CASES "PAROLED" IN JANUARY, 1917

In the January term of 1917, 254 men pleaded guilty or were convicted of felonies and 135 were paroled by the court. It should be remembered that these men were a selected bad lot, since by the decimating processes of the system most of those who had anything in their favor had escaped in the police court, in the grand jury room, in the prosecutor's office, or by pleading guilty to a misdemeanor instead of the original charge of felony. Yet over 53 per cent. of this dangerous group went practically unpunished. For purposes of comparison, a page of the conviction book for this January, 1917, term is reproduced, the word "paroled" appearing in the last column where such action was taken. Note the large number of crimes of a professional nature which were unpunished.¹

This page should be contrasted with the page reproduced from the conviction book for September term, 1920.

In this term 257 men pleaded guilty or were convicted of felonies, and 30 were paroled, or a little more than 11 per cent. This represents reaction to the "crime wave" and a revolt against "good-fellowism."² The contrast is a witness to the effect of public clamor upon the judicial mind, since there probably was about the same proportion of confirmed evildoers and meritorious offenders in the 1917 term as in the 1920 term.

The judge who presided during the 1917 term has declared that 80 per cent. of cases paroled never get into trouble again. Whether or not this is true,³ it does not justify paroling blindly. A too free use of parole

¹ "B. & L." means burglary and larceny, "P. P.," pocketpicking, "C. C. W.," carrying concealed weapons; "O. M. V.," operating motor vehicle without consent of owner. The fact that this happens to be the term of any particular judge makes no difference. The record of nearly every judge prior to 1917 would have been similar. The trouble is not so much with any particular judge as with a system which compels him to guess in the dark.

² To appreciate the force of this revolt the November, 1920, votes for Republican candidates for President and Governor should be compared.

³ Detective Koestle, of the Bureau of Criminal Identification, agrees with this estimate.

No.	NAME	Crime	Sentence	Cash	Cash's Costs	Date of Sentence	REMARKS
10072	Edward Williams	Rob.	Pen 25 yr.	✓	8 90	Jan 17	
10076	Charles Townsend	Rob.	Ex R. 16 yr.	✓	7 45	" 17	Paroled
10078	Wm. Sonnelly	Rob.	Ex R. 16 yr.	✓	7 75	" 17	Paroled
9887	Robert Hoffmann	Rob.	Ex R. 6 yr.	✓	12 15	" 18	Paroled
9893	Charles Knight	Rob.	Ex R. 9 yr.	✓	7 85	" 18	Paroled
9893	Lois Slater	Rob.	Ex R. 9 yr.	✓	5 65	" 18	
9104	George Miller	Rob.	Ex R. 17 yr.	✓	8 30	" 18	Paroled
9883	Joe Brown	Rob.	Ex R. 15 yr.	✓	8 75	" 18	Paroled
10048	John Kennedy	Rob.	Ex R. 17 yr.	✓	8 25	" 19	Paroled
9165	Chas. B. Boggs	Rob.	Pen 31 yr.	✓	11 30	" 20	Paroled
9675	Emil Janosch	Rob.	Ex R. 27 yr.	✓	9 25	" 20	Paroled
9992	Walter Zarnuba	Rob.	Ex R. 20 yr.	✓	7 90	" 20	
10075	Frank Martin	Rob.	Ex R. 18 yr.	✓	9 20	" 20	Paroled
9902	Effie White	Rob.	Ex R. 39 yr.	✓	11 05	" 20	
10125	James H. Smith	Rob.	Ex R. 14 yr.	✓	6 85	" 20	
10109	Walter Knight	Rob.	Ex R. 14 yr.	✓	8 10	" 20	Paroled
9564	James Kelly	Rob.	Ex R. 13 yr.	✓	8 05	" 22	Paroled
10130	Port Adair	Rob.	Ex R. 8 yr.	✓	6 70	" 22	
10108	Richard Miller	Rob.	Pen 16 yr.	✓	7 45	" 22	Paroled
9134	Henry Fox	Rob.	Ex R. 21 yr.	✓	8 95	" 22	Paroled
9859	John Shumaker	Rob.	Ex R. 18 yr.	✓	8 65	" 23	Paroled
10120	Michael Higgins	Rob.	Pen 20 yr.	✓	9 15	" 23	
10128	Lois Melott	Rob.	Pen 10 yr.	✓	5 55	" 23	
10123	George H. Lee	Rob.	Pen 10 yr.	✓	5 50	" 23	
9990	Earl Casanich	Rob.	Ex R. 16 yr.	✓	5 40	" 23	Paroled
9860	David Miller	Rob.	Pen 27 yr.	✓	9 90	" 23	Paroled
9898	George L. Smith	Rob.	Ex R. 12 yr.	✓	7 45	" 23	Paroled
9946	John Pacha	Rob.	Ex R. 20 yr.	✓	8 80	" 24	Paroled
10091	Blarena Parfen	Rob.	Ex R. 47 yr.	✓	9 00	" 24	
10142	Robert Robinson	Rob.	Ex R. 27 yr.	✓	6 70	" 24	
10143	Stanley Pack	Rob.	Ex R. 11 yr.	✓	7 25	" 24	Paroled
10075	Charles Robinson	Rob.	Ex R. 26 yr.	✓	8 95	" 24	Paroled
10073	Joseph L. Smith	Rob.	Pen 10 yr.	✓	6 55	" 24	Paroled
10139	Chas. Platt	Rob.	Ex R. 20 yr.	✓	7 80	" 24	Paroled
9535	Thomas Burton	Rob.	Ex R. 27 yr.	✓	10 60	" 24	Paroled

TERM COMMENCING Sept. 7, 1920							45
JUDGE: Brown, Presiding. See JOURNAL				CONVICTIONS.			
No.	NAME	CYCLE	SECURITY	CODE	CLERK'S COSTS	DATE OF EXPIRATION	REMARKS
Dec 1822	William Reynolds	Larceny	P.R.	13 67	7 50	Sept 7	
B 18516	Rice Donahue	Rape	P.R.	45 57	9 80	" 7	
B 18760	Peter O'Connell	Embry. P.R.	10 39	9 70	" 9		
Dec 18360	Charles Bryan	Larceny	P.R.	100 06	13 95	" 10	
B 18926	Levin Steele	P.R. Larceny	10 51	7 10	" 11		
B 18927	Frank Timblin	Forgery	P.R.	14 21	6 90	" 11	
B 18932	James Lanyon	P.R.	11 46	6 60	" 11		
B 18970	Frank Miller	Rob. P.R.	15 66	6 60	" 11		
B 18970	Edw. Miller	Rob. P.R.	9 36	5 10	" 11		
B 18515	Mike Petrella	Larceny	P.R.	50 24	13 95	" 14	
Dec 18954	Victor Brach	P.R. Larceny	26 49	8 45	" 15		
Dec 18962	Ed Brannen	Larceny	P.R.	15 31	7 15	" 16	
D 18911	Richard Murray	Rob. Larceny	13 06	7 75	" 16		
D 18911	David Holm	Rob. Larceny	20 15	8 70	" 16		
Dec 18963	M. Windy Brown	Rob. Larceny	22 97	8 20	" 16		
B 18610	John Tallman	Larceny	P.R.	61 66	14 75	" 17	
B 18916	James Minor	Rape	P.R.	25 00	8 70	" 17	
B 18968	Frank Tighe	Rob. Larceny	29 10	8 45	" 17		
D 18973	John Martin	Burglary	P.R.	24 23	8 15	" 17	Paroled
Dec 19094	Frank Bapton	Rob. P.R.	17 31	6 70	" 18		
Dec 19094	Levi Minchuk	Rob. P.R.	9 36	5 10	" 18		
Dec 19385	Ralph Sprue	Larceny	P.R.	17 01	6 60	" 18	
D 18944	Thomas Francis	Larceny	P.R.	26 66	8 70	" 20	
D 19067	Mike Kloris	Rob. Larceny	22 71	10 55	" 20		
Dec 18045	Joseph Rich	Larceny	29 24	12 31	" 21		
Dec 18974	William Murray	Rob. P.R.	15 46	7 25	" 21		
B 18709	Robert O'Hall	Larceny	24 60	14 20	" 21		
B 19052	William Mayers	Larceny	P.R.	22 08	8 45	" 21	
B 18918	Harry Perceant	Larceny	P.R.	28 71	9 45	" 22	Paroled 1920
B 19122	Mike Murray	Burglary	P.R.	14 21	6 80	" 22	
B 19123	Michael Murray	Burglary	P.R.	17 26	6 70	" 22	
B 19156	Albert Hammett	Burglary	P.R.	14 01	6 70	" 22	
B 19034	Frank Edwards	Rob. Larceny	31 53	8 95	" 22		
Dec 19041	Hayes Hanna	Larceny	P.R.	37 84	8 90	" 23	
B 19194	Blanche N. Blain	Burglary	P.R.	18 06	8 15	" 23	Paroled

Page from the conviction book, September, 1920, term of Common Pleas Court, showing the relatively small number of paroles

certainly encourages others, if not the defendant himself, to "take a chance" where their "pal" got off so lightly.¹

It should always be remembered that the parole represents leniency to men *proved* guilty and involves no question of punishing innocent men with which it is often sentimentally confused. Every possible precaution should, therefore, be taken to protect the public from the 20 per cent. who admittedly get into trouble again. In a court with proper facilities for obtaining information such a large percentage would not be freed to prey upon the community.

It is not possible to study the history of each individual felon paroled in January, 1917, but even without such a study, from the facts already known to the Bureau of Criminal Identification, it is possible to indicate the loose operation of the "bench parole." Undoubtedly there is much more which has not got into the police records of Cleveland.² It should be remembered that the "bench parole" was intended as a helping hand for the erring and not as an additional device to facilitate the escape of crooks. Nevertheless, owing to the absence of any responsible informant, the court has to some extent unintentionally established another loophole.

Of those paroled in January term, 1917, at least eight were then known to the police of Cleveland as having been arrested for or convicted of serious offenses, five having "done time" before, and one having sentence previously suspended. Two of these men actually had cases pending in the Municipal Court at about the same time. One of them, Frank Nolan, was given a suspended sentence under an alias in the lower court just before he was paroled on the more serious charge in the Common Pleas Court. Of these eight men, four have not been arrested in Cleveland since the charge on which they were paroled. The others have since had criminal records, including one notorious robber who finally landed in the penitentiary, and one professional pickpocket who still plies his trade in Cleveland with occasional interruptions by the police.

¹ One of the judges of the new Detroit court tells of three successive larcenies by different messengers of the Western Union, the first two receiving probation and the third offender being punished severely to stop what seemed to be the beginning of an epidemic.

² Not only are many arrests not recorded, especially for minor offenses, but many offenses are committed for which no arrests are made. The late Judge Foran called attention to the fallacy of using the police record only to determine whether the defendant is a "first offender." He may have been a continuous offender for years and have always escaped arrest.

Fifteen others of those paroled have since been known to the police, five of them being returned to the reformatory or penitentiary as parole violators—three for robbery, one for forgery, and one for violation of the automobile law. Of the nine remaining, one was killed while committing a burglary in Cleveland a few months after his parole, six have been arrested in Cleveland for robbery, burglary and larceny, auto-stealing, and violating the automobile law; two have been arrested in other cities for larceny, and one has been located in San Quentin State Prison, where he is serving sentence for bank robbery.

PAROLING IN THE DARK

Admitting that to parole or not to parole is a question often involving the most difficult judgments, and that a low percentage of errors is represented by eight men already known to the police and at least 19 men who continued careers of crime thereafter out of a total of 135, it is a safe assumption that few of these men would have escaped with parole if the judge had been supplied with a thorough, impartial report in each case. The number of professional or hardened criminals is always a low percentage of the total who get into serious trouble, and such men can usually be "spotted" by the time they get before the Common Pleas Court on serious charges, provided the *responsibility for investigating them is placed in one agency and there is no question of ability or integrity.*

It is no answer to the urgent need for such an agency to assume that the matter of the "bench parole" is a question of the ability and conscientiousness of the particular judges. It is true that some judges are more lenient than others, and some are susceptible to persuasion, especially if applied by politicians¹ or newspapers,² but the fundamental trouble remains. Avoidable mistakes will always be made when judges are asked to decide in the dark.

The story is told of an ex-judge, then president of the Bar Association, who began a hue and cry about the leniency of the courts. Upon being shown by the county examiner his own record of "paroling" while judge,

¹ A weak judge heeds a politician not because he desires to do so, but because he sees no escape. If such a judge were armed with a carefully prepared report on the defendant, he could successfully meet such importunities in an unworthy case.

² A former reporter relates the following story about a judge who is no longer on the bench: During a recess in the trial of a misdemeanor case, the reporters bet that they could make the judge sentence the defendant although the court had seemed inclined to favor him. A reporter then remarked to the judge, "You are not going to let that bad egg go, are you, Judge?" Sentence was promptly pronounced.

he promptly subsided. The late Judge Foran personally related that he recently "paroled" an embezzler upon many representations of good character made to him. A week later the parole officer brought in a record of conviction for stealing 20 barrels of whisky many years before, and only then the judge awoke to the fact that he had been this man's counsel at the former trial! In the *Plain Dealer*, April 7, 1921, is published a letter by Judge Cull to the County Council of the American Legion in which the judge writes of a veteran who pleaded guilty to perjury, " * * * nevertheless, after having sentenced him, some questions arise in my mind, and I know of no place to turn to to secure a friendly interest in the prisoner unless it is from your organization." On March 11, 1918, one Andrew Kebort pleaded guilty to the charge of robbery, and for some reason was not sentenced. About a year later an Assignment Commissioner was appointed and he began to press for disposition of ripe cases. Purely for the purpose of completing the record, apparently, the presiding judge¹ caused an entry to be made on June 9, 1919, sentencing Kebort to the Reformatory and suspending the sentence.² In the meantime, on August 31, 1918, Kebort had been convicted and sentenced to the workhouse for petit larceny, and on July 16, 1919, after stealing an auto and robbing three people, he shot and killed one man and wounded two others while resisting arrest.

An ex-Municipal Court judge states that one of his colleagues, a man of unquestioned integrity, suspended sentence in the cases of certain gamblers because he had no information that they ran a notorious place. It was the former judge's opinion that a prominent city official wanted to "get something" on this judge, and so he was led into the trap of releasing well-known offenders.³ A former judge states that during his term on the criminal bench July 14 was heralded as "Emancipation Day" because the cases of 75 negro prostitutes had been continued to that day. He was advised to suspend their sentences, and if they were brought in again to send them to the workhouse. This he did, but when they came in again, many under assumed names, it was almost impossible to identify them.

¹ The original trial judge was no longer on the Common Pleas bench.

² The political lawyer who defended Kebort is reported to have "blamed" the resurrection of this case upon the establishment of the Assignment Commissioner's office.

³ This same man observes that while on the bench he felt like the baby Emperor of China, wondering who would poison him next—the police, detectives, or prosecutors.

"NOLLING" CASES

What is true of the "bench parole" and suspended sentences is equally true of the judge attempting to pass on the prosecutor's motion to "nolle" a case. Owing to the judges' inability to act intelligently on such motions, they have become largely a matter of form only, the judge accepting the prosecutor's statement of the facts. In the rush of the day's business it is nearly impossible for the judge to go fully into any case before granting the motion *nolle prosequi*.

Many cases are "nolled" because the defendant is already in the penitentiary, or has been convicted or acquitted on another indictment growing out of the same act, or because there is a patent defect in the indictment. It is easy in such cases for the prosecutor to convince the judge. In other cases, however, the prosecutor is presumably exercising his judgment on the merits, and this often results in the function of judge and jury being quietly exercised by an assistant prosecutor. Since these motions are usually made orally, and no court record of the reason is made, the lack of opportunity for judicial curiosity furnishes an easy mode of escape in many cases.

At least once in the official life-time of every prosecutor it is necessary to "clean house," viz., to clear the docket of hundreds of cases which have been accumulating for years but which, for one reason or another, should be "nolled." These include old cases in which the defendant has never been apprehended, or bail has been forfeited, or there have been sentences or acquittals on other charges growing out of the same deed. This clean-up takes the form of a "blanket nolle," presented on motion to the presiding judge of the criminal division. In February, 1920, such a motion, containing over 400 cases, was presented to Judge Kennedy. The utter futility of a judge's attempting to pass judgment on the merits of so many cases at one time is obvious.¹

The motion *nolle prosequi* is another example of the decay of an institution which flourished successfully under the rural conditions of its origin, but which threatens to become a menace in a great modern city. Where the few criminal cases furnish diversion for the town, where the prosecutor is a marked man among his fellow-citizens, where interest in the crime and the criminals lightens the harvest and shortens the winter evenings, there can be little abuse of the motion *nolle prosequi*. Such checks are lost, however, in the rush and roar of a great city, especially

¹ No detailed analysis of the cases in the above "blanket nolle" is here made because that is properly a part of the study of the prosecutor's office. The point made here is the helplessness of the judge.

the typical American metropolis, with its mounting crime rate, its lack of a tradition of disinterested public service, and the insidious ramifications of political influence.

If the motion is retained, it should be made a real motion, so that the independent discretion of the judge is one with that of the prosecutor. Here, as in the case of the parole, the judge must be able to rely upon an impartial and thorough investigation.

RECOMMENDATIONS

Before proceeding to a consideration of the agency which should advise the court, a number of preliminary suggestions which seem essential may be made.

1. Preliminary Suggestions

The motion to "nolle" should be in writing, and should specify the reasons for the refusal to prosecute.

No "bench parole" or "nolle" should be granted until ample notice that the court contemplates such action is—

- (1) Delivered to the complaining witnesses.
- (2) Delivered to the police officers in charge of the case.

It should also be in the discretion of the court to direct that notices of motions to "nolle" be posted publicly in the court-house. This will protect the court and prosecutor against being compelled to act on an *ex parte* presentation by friends of the accused. An exception to the rule should be made in the case of violations of ordinances, non-criminal in nature, and perhaps of trivial misdemeanors.

The "blanket nolle" should be absolutely limited to cases involving no exercise of judgment, as most of the cases in such motion are at present, viz., old cases in which bail is forfeited, defendants not apprehended, or previously sentenced or acquitted for the same act. Before the motion is allowed, copies should be delivered to the Bureau of Criminal Identification for information and advice, and to the press for publication.¹

The agency upon which the court should rely in disposing of criminal cases should be an *adequate Probation Department*, under a single head, appointed by the Common Pleas Court, organized to handle the criminal business before all the courts in city and county, exclusive of juvenile

¹ John A. Cline, ex-prosecutor of Cuyahoga County, reports that when in office he gave a list of cases in "blanket nolle" to the press two weeks before the motion was made, with notice that he would "nolle" unless someone appeared to object. This should be made a rule of court, but the publication should be after, not before, the motion is made.

cases. A Probation Department should exercise a double function, namely, to follow up cases placed in its custody, and to advise the court as to disposition after conviction, or upon a motion to "nolle." The first function is not here considered because it belongs more properly under a discussion of the general treatment of offenders, but the latter is vital to the present question.

2. An Adequate Probation Department

The disqualifications of the police and prosecutor's office as the court's reliance have already been discussed.¹ What is needed is a department which makes a business of studying offenders as human beings, which will make use of the excellent records kept by the Bureau of Criminal Identification, but round out these records as to offenses, and supplement them with the many considerations which never appear on a court docket.

Such probation as there is in Cleveland²—if what there is may be dignified by the name—is another proof of the rapid growth of the city and the apathy of its citizens toward the human aspects of government. One would have to travel far to find a great center which is guilty of such gross neglect. Three men and three women probation officers, forced to labor without clerks or stenographers, is the sum of what has been provided, and that grudgingly. These six are attached to the Municipal Court, none to the Common Pleas Court.³ Paroling defendants to relatives, detectives, clerks, and even stenographers in the prosecutor's office⁴ has made a joke of probation, but the Common Pleas Court has had no other agency afforded it. Mrs. Antoinette Callaghan and her two assistants in the Municipal Court understand their task and work hard over the women probationers, but theirs is an impossible problem. The men's Probation Department has apparently never been taken seriously by the city. Until James Metlicka came into office there was not, he says, even a system for recording payments, the checks being jumbled into a drawer or carried around in some one's pocket.

These feeble beginnings of probation should not be made the basis

¹ Page 95, this chapter.

² Exclusive of the Juvenile Court.

³ There is also one volunteer officer from the Woman's Protective Association.

⁴ The Central Municipal Court in Boston, serving a population much smaller than that of Cleveland, has 26 probation officers, 15 clerks, a medical director, and an assistant director. In addition there are 19 probation officers attached to the district courts of the city, and nine probation officers to the Superior (County) Court. There are also many trained volunteer workers from social agencies working in conjunction with all the courts.

of judgment on the institution. A totally new conception of probation must be grasped, and a professional staff, adequate in numbers and personnel, established. Salaries should be commensurate with the importance of the office, and no man is too big for head of the staff.¹ Above all, the department must be kept out of politics.

3. A Central Bureau of Information

The Probation Department should establish as part of its work a Central Bureau of Information respecting persons charged with crime, containing the court records of offenders, together with all essential data relating to family, environment, physical and mental condition, etc. Such a record would aid the department in its treatment of offenders, and put it in a position to advise the court fully before disposition is made. In addition, valuable statistics would be collected to warn the people of Cleveland in time to forestall another breakdown.

The idea of such a Central Bureau has recently been gaining ground in Cleveland. The so-called "Day Bill," enacted into law this spring (G. C., Sections 13523, 13524, 13529, 13550), establishing the office of Bond Commissioner, imposes on the new office the consolidation of criminal records to be made up and transmitted by the Municipal and County Clerks. The educational value of this legislative beginning is considerable, and it should not be difficult, now, to transfer this duty, together with other collateral responsibilities, to the Probation Department when established. At a meeting of the Cleveland Bar Association May 7, 1921, the establishment of an advisory board of criminal prevention was recommended, to aid in the meting out of sentences, discharges, and paroles. Although the concrete measure suggested may not be the one best adapted to accomplish the purpose sought, this resolution places the Bar Association on record as recognizing a great need.

A probation staff, adequate for the needs of Cleveland, would mean a new expense, but whether an additional expense or not would depend on the economy effected in other much less essential branches of the government. Even if every cent appropriated meant additional cost, the expense is one which a civilized community cannot shirk. No man can compute what has been the cost to Cleveland of the failure to provide means for salvaging the redeemable portion of its erring citizens and of blindly unleashing on the community its worst enemies to pillage, terrorize, and murder. Even less calculable is the insidious effect upon the moral tone of the community.

¹ Until a few months ago the head of the probation work in Detroit was Edwin Denby, now Secretary of the Navy.

CHAPTER IX

MOTIONS FOR NEW TRIAL

FREQUENCY

EVEN after a case has gone through the trial stage and the jury has returned a verdict of guilty, there are still chances of success for the defendant.

peal, but also a likelihood of a new trial. In the last year dealt by setting aside the verdict, 14 motions were granted. begun in 1919 there were 14 motions granted. known judges, 95 motions were granted. judges. Fourteen per cent. of all motions were granted. per cent. of all motions.

Table 24 shows such cases.

TABLE 24.—MOTIONS FOR NEW TRIAL

Judge			
Baer			
Cull			
Day		1	..
Foran	27	1	1
Henderson	2	..	2
Jewell	3	..	1
Kennedy	16	8	4
Kramer	3	..	1
Levine	6	2	1
Pearson	16	5	..
Phillips	43	9	4 ³
Powell	40	5	4
Stephenson	2	1	..
Stevens	35	4	10 ⁴
Thomas	2	1	..
Total	292	53	41

¹ Three followed pleas of guilty.

² Three followed pleas of guilty.

³ Two cases involving same crime.

⁴ Four cases involving same crime.

ANALYSIS OF RESULTS

Generally, the large percentage of new trials granted indicates poor work by the juries, since in most instances the new trial is granted by the trial judge because the verdict is against the weight of the evidence, and not because of erroneous rulings of the judge. In such cases a new trial is the only safeguard against rank injustice. From a study of the records in Cleveland, however, it is apparent that in most cases there is no real intention to grant another trial. The verdict is simply set aside in order to effect one of the many other adjustments. Table 25 shows the outcome of all the new trials granted in the group considered.

TABLE 25.—DISPOSITION OF 41 NEW TRIALS GRANTED IN 1919

No.	Indictment	Judge at first trial	Judge, final disposition	Nature of final disposition
1	Rape	Baer	Pearson	Pleads guilty to assault and battery, workhouse and fine
2	Burglary and larceny	Baer	Baer	Pleads guilty to lesser offense, Ohio State Reformatory
3	Burglary and larceny	Baer	Baer	Pleads guilty to lesser offense, Ohio Penitentiary
4	Carrying concealed weapons	Cull	Cull	Costs
5	Murder first degree	Cull	Cull	Pleads guilty to second degree murder, life sentence
6	Carrying concealed weapons	Cull	Stephenson	Nolled
7	Burglary and larceny	Cull	Cull	"Bench parole"
8	Burglary and larceny (brother of above)	Cull	Cull	"Bench parole"
9	Pocketpicking	Cull	Kennedy	Pleads guilty to petit larceny, 10 days
10	Neglect to support	Cull	..	Continued
11	Violating auto law	Cull	Cull	"Bench parole"
12	Burglary and larceny	Cull	Cull	"Bench parole"
13	Carrying concealed weapons	Cull	Cull	Decree vacated, original sentence ordered executed
14	Burglary and larceny	Foran	Foran	Pleads guilty to petit larceny, 30 days and fine, suspended sentence
15	Grand larceny	Henderson	Pearson	Nolled
16	Abortion	Jewell	Pearson	Nolled
17	Auto-stealing	Kennedy	Kennedy	Dismissed, want of prosecution
18	Burglary and larceny	Kennedy	Cull	"Bench parole"
19	Grand larceny	Kennedy	Kennedy	Pleads guilty to petit larceny, \$50 fine
20	Cutting to wound	Kennedy	Kennedy	Pleads guilty to assault and battery, \$50 fine
21	Grand larceny	Kennedy	Kennedy	Nolled

CHAPTER IX

MOTIONS FOR NEW TRIAL

FREQUENCY

FVEN after a case has gone through the trial stage and the jury has returned a verdict of guilty, there are still chances of escape for

pea
dea
beg
knc
jud
per

	1	1	20
	27	1	1
	2	..	2
	3	..	1
	16	8	4
	3	..	1
	6	2	1
	16	5	..
	43	9	4 ³
	40	5	4
	2	1	..
	35	4	10 ⁴
	2	1	..
Total	292	53	41

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³ Two cases involving same crime.

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ANALYSIS OF RESULTS

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4	Carrying concealed weapons	Cull	Cull	Costs
5	Murder first degree	Cull	Cull	Pleads guilty to second degree murder, life sentence
6	Carrying concealed weapons	Cull	Stephenson	Nolled
7	Burglary and larceny	Cull	Cull	"Bench parole"
8	Burglary and larceny (brother of above)	Cull	Cull	"Bench parole"
9	Pocketpicking	Cull	Kennedy	Pleads guilty to petit larceny, 10 days
10	Neglect to support	Cull	Cull	Continued
11	Violating auto law	Cull	Cull	"Bench parole"
12	Burglary and larceny	Cull	Cull	"Bench parole"
13	Carrying concealed weapons	Cull	Cull	Decree vacated, original sentence ordered executed
14	Burglary and larceny	Foran	Foran	Pleads guilty to petit larceny, 30 days and fine, suspended sentence
15	Grand larceny	Henderson	Pearson	Nolled
16	Abortion	Jewell	Pearson	Nolled
17	Auto-stealing	Kennedy	Kennedy	Dismissed, want of prosecution
18	Burglary and larceny	Kennedy	Cull	"Bench parole"
19	Grand larceny	Kennedy	Kennedy	Pleads guilty to petit larceny, \$50 fine
20	Cutting to wound	Kennedy	Kennedy	Pleads guilty to assault and battery, \$50 fine
21	Grand larceny	Kennedy	Kennedy	Nolled

TABLE 25.—DISPOSITION OF 41 NEW TRIALS GRANTED IN 1919—
Continued

No.	Indictment	Judge at first trial	Judge, final disposition	Nature of final disposition
22	Robbery	Kramer	Kramer	Pleads guilty to assault and battery, 30 days and fine
23	Rape	Levine	Pearson	Nolled
24	Manslaughter	Phillips	Pearson	Trial, not guilty
25	Shoot to kill	Phillips	Stevens	Nolled
26	Housebreaking and larceny	Phillips	Bernon	Nolled
27	Housebreaking and larceny	Phillips	Baer	Nolled
28	Receiving stolen property	Powell	Powell	Nolled
29	Grand larceny	Powell	Baer	Trial, not guilty
30	Cutting to wound	Powell	Powell	Pleads guilty to assault and battery, 30 days
31	Cutting to wound	Powell	Phillips	Pleads guilty to assault and battery, 60 days
32	Manslaughter	Stevens	Stevens	"Bench parole"
33	Cutting to wound	Stevens	Stevens	Pleads guilty to assault and battery, 6 months
34	Robbery	Stevens	Stevens	Pleads guilty to assault and battery, 30 days
35	Robbery	Stevens	Stevens	Pleads guilty to assault and battery, 30 days
36	Robbery	Stevens	Stevens	Pleads guilty to assault and battery, 30 days
37	Robbery	Stevens	Stevens	Pleads guilty to assault and battery, 30 days
38	Burglary and larceny	Stevens	Stevens	Pleads guilty to petit larceny, 30 days
39	Burglary and larceny	Stevens	Stevens	30 days and costs, suspended sentence, returned as parole violator
40	Pocketpicking	Stevens	Stevens	Pleads guilty to petit larceny, 30 days
41	Arson	Stevens	Powell	Nolled

Since only two cases out of 41 new trials granted actually went to trial, it is apparent that this motion is negligible for the purpose originally intended. This is perhaps natural in view of the fact that a defendant once convicted is more willing to plead guilty to a lesser offense than before trial. In all, 18 such pleas were accepted. In view of the number of convictions for "cutting to wound" set aside on this basis, it seems as if the judges were using the new trial to accomplish "rough justice," since most cases of this character are the result of brawls. Some of the defendants, however, seem particularly fortunate. In the rape case, No. 1, the conviction was set aside on evidence which should have been available at the trial, and the defendant was allowed to plead guilty to

assault and battery when there was no doubt as to his being guilty of at least an attempt to rape. The victim was a twelve-year-old girl. Nos. 2 and 19 were hardened criminals with long records, yet the latter particularly received gentle treatment, being fined \$50 and set free to continue his career.¹ It need hardly be said that at least the same thorough consideration should be given to the disposition of a case after the conviction has been set aside as is urged in the preceding chapter.² It should be said that No. 9 was a case in which the prisoner, an old offender, aided the police materially in other cases, and the readjustment of his case was at the request of the police.

Ten cases were "nolled" after new trial granted, and one dismissed for want of prosecution. Generally, where a judge sets aside a conviction because the verdict was not sustained by the evidence, and the State has no further evidence to offer, a "nolle" is a proper disposition. At least two of these cases, however, had the unusual feature of a new trial being ordered after a plea of guilty. In No. 21 the defendant was sentenced to the Ohio State Reformatory, a note in the prosecutor's office reading, "Defendant pleads guilty to stealing a Dodge touring car, 1919 model, of the value of \$1,000." A motion for a new trial was granted four months later, and a few weeks thereafter a motion to "nolle" the case was allowed. In No. 16 the defendant was indicted for auto-stealing with a count for operating a motor vehicle without the consent of the owner. He pleaded guilty to the court on March 1, 1920, and was sentenced to the Reformatory. On June 7 a motion for a new trial was allowed, and on June 29, 1920, the case was dismissed "for want of prosecution." Inquiry develops the fact that the owner of the car was not notified of any new trial, and in April, 1921, still believed the original

¹ This criminal came before the court again within a few weeks on an indictment for burglary and larceny. The judge granted a motion to discharge, but within a month this man was arrested for another "job" in Elyria, and his operations were temporarily interrupted by a sentence to the penitentiary by the Lorain County Court.

² No. 19017 in the Common Pleas Court, a 1920 case, illustrates the slipshod methods which damage the prestige of the court. The defendant was convicted of incest with his fifteen-year-old sister-in-law, and the testimony was that he had cohabited with her many times. It is reported that he had confessed his guilt to the officers before trial. On November 5 he was sentenced to the penitentiary, and later on the same day a motion for a new trial was filed. On November 12 the motion was allowed, a plea of guilty to assault and battery accepted, and the defendant sentenced to thirty days in the workhouse. The Humane Society, which had charge of the child, was not notified of this action and learned of it only by examining the court record.

sentence was executed. The following note by Assistant Prosecutor Corrigan is the only explanation of record:

"This case was called for trial by Judge Kennedy by mistake of the prosecutor's office. The wrong witnesses were subpoenaed. I stated to the court this fact and requested a continuance until the next day, at which time I would be ready for trial. The request was refused and the court peremptorily dismissed the defendant. There was no trial. No jury was impanelled."

Six defendants received a "bench parole" after new trial granted—five from Judge Cull and one from Judge F. E. Stevens or by Judge Powell for Judge Stevens. In one of Judge Cull's cases the defendant had pleaded guilty and then was granted a "new trial." One gets the impression in some of these cases that the judges, believing the defendants entitled to probation, use the device of granting a new trial to get them out of the Reformatory. Then, by a fresh plea of guilty, new sentence, and "bench parole," the desired result is accomplished. While this procedure in the hands of the two particular judges is not likely to be abused, there should be a definite rule against it. The general use of the new trial for this purpose might easily disrupt the entire penal law of Ohio and make the judges a target of continuous pressure and solicitation.

CLEAR POLICY RECOMMENDED

It is time for the judges of the Common Pleas Court¹ to formulate a clear policy regarding new trials. The large number indicates—(a) poor quality of jurors; (b) weak or befogged charges by judges to the juries; (c) rearrangements to conform to the conscience of particular judges, but not to the law; (d) yielding to solicitation of the defendant's lawyer or relatives. A trial is not only an expense to the county, but, as has already been seen, it is a difficult matter to bring an accused as far as trial on the indictment. The steps in the administration of justice need drastic curtailing and not extension by a fictitious use of a new trial. The ends of justice will be served by confining this motion strictly within its legitimate scope.

¹ On account of the state of the records, a study of motions for new trials in the police court is extremely difficult. Moreover, such motions are relatively rare because of the scarcity of jury trials in that court. Where a judge tries without jury, he will not usually admit error in his own rulings, since he would not have made the rulings unless he believed them to be correct. New trials are, however, sometimes granted in this court by the judges, and where this is done, the considerations applicable to the Common Pleas Court apply with added force because of the cloudy records. Complete deception of complainants and public may be accomplished by the new trial in the Municipal Court.

CHAPTER X

PERJURY

MEANING OF THE MCGANNON TRIAL

AFTER the second trial of Judge McGannon for the murder of Harold Kagy, the air was filled with observations that a look behind the scenes in this case would reveal the whole trouble with Cleveland justice. This, of course, could not be so, since the trial of a Chief Justice for second degree murder, in the glare of publicity, is not a typical case in any administration of justice. In order really to learn about the system, it is far more helpful to watch the experienced "dip" or "big-job" man darting in and out of the net.

Through the effective work of Special Prosecutor William L. David in securing convictions for perjury, including that of Judge McGannon, we now know for certain that at the bottom of the second McGannon trial lay a something older than the written history of man—false testimony. Instead of secret powerful influences, we find the familiar story of perjury induced by love, hope of gain, and fear of destitution. Nevertheless, in his exposure of wholesale perjury Mr. David is also revealing one of the real weaknesses of the Cleveland system.

Those familiar with the administration of justice in Cleveland would probably agree that in the trials for the murder of Harold Kagy, Cleveland is paying the penalty in disgrace for its apathy toward the crime of perjury. In the second McGannon trial the court appeared helpless and prostrate before palpable perjury.¹ Criticism of the presiding judge for weak handling of the case is unavoidable. Miss May Neely, "star" witness for the State, had made a most detailed disclosure at the first trial, but at the second trial refused to testify, claiming privilege from self-incrimination. The attitude of this witness made a farce of the procedure of justice. Her answers to simple questions as to what she observed on the night of the killing consisted largely in unresponsive expostulations that "Judge McGannon did not kill Harold Kagy," and in parroting the formula, "I refuse to answer on the ground that it would tend to either disgrace or incriminate me." Puzzled as to how

¹ After the trial the judge who presided is reported to have expressed his opinion to the Bar Association that perjury had been committed.

the reply to simple questions as to what she saw could incriminate the witness, the judge asked her to explain to him privately the reasons for such a position. After this private explanation the judge supported Miss Neely whenever she refused to reply. However, he allowed the prosecuting attorney to examine Miss Neely fully in the absence of the jury, during which Miss Neely testified that she had told the truth at the first trial. It is manifest that the private explanation to Judge Powell was to the effect that the witness perjured herself at the first trial, since no other excuse would cover a refusal to answer the questions put to her. The situation then apparently became one where a witness informally tells a judge that she lied in her previous testimony, but under oath says that she told the truth. Under these circumstances a court sensitive of its position would have known how to deal with such a witness, even if not roused to action by her attitude earlier in the case.

The fact that Judge Powell did not vindicate the dignity of the court is typical of the general attitude toward perjury. Lawyers and judges tell of cases in which witnesses admitted perjury, but nothing was done. "The average witness has no respect for his oath," says a former Common Pleas judge; "in three out of five cases, civil or criminal, the judges and lawyers know some of the witnesses lied."

LAXNESS IN PUNISHING OFFENSES AGAINST JUSTICE

The statistics for the Common Pleas cases begun in 1919 yield impressive evidence of this callousness toward corruption of the court's process. Out of more than 3,000 cases, only 27 were for offenses against public justice, of which 20 were bribery and 7 perjury. This was probably an unusually large number of such cases because of the indictments returned by the special grand jury in 1919. In view of the firm conviction of the bench and bar that perjury and subornation of perjury are common, this showing of less than 1 per cent. charged with such crimes is significant. Even these cases were disposed of as follows:

No bill by grand jury	3
Dismissed for want of prosecution	12
"Nolled" on all counts	7
Acquitted by jury	3
Pleaded guilty	1
Convicted by jury	1
	<hr/>
Total dispositions	27
Total found or pleaded guilty	2
"Bench parole"	1
	<hr/>
Total punished	1

Behind the McGannon trial, therefore, is a community which recognizes the prevalence of crimes against public justice but seeks to vindicate the law in only a handful of cases in a year for such offenses and allows all but one offender to escape.¹

RECOMMENDATIONS

The attitude of the courts and public toward this kind of offense is not induced wholly by indifference, however. The perjury statute, G. C., Sec. 12842, provides as a penalty imprisonment in the penitentiary "not less than one year nor more than ten years." Undoubtedly the severity of this statute is a partial explanation of the paralysis of its enforcement.

The statutes relating to the giving and obtaining of false testimony should be amended in the penalty clause so that a judge could impose a severe fine or a workhouse sentence. Following this, an active campaign against perjury in civil and criminal actions would upset the old tradition and replace it with a wholesome respect for an oath. One judge has suggested a special prosecutor to handle perjury complaints alone. The vigor and success of Special Prosecutor David has opened the way for the new tradition. The campaign should not stop with the witnesses, however, but should reach beyond to the lawyers responsible for their offense. In this respect the Cleveland Bar Association has an imperative duty and opportunity. In the last analysis, however, the judges cannot delegate their responsibility to campaigns and prosecutors. Alert and strong judges, jealous of the sanctity of their court, constitute the only lasting insurance against the practice of perjury.

¹ The drugged state of the public conscience is indicated by Petition No. 188262, filed by one of those indicted in the McGannon perjury investigation against Judge McGannon for balance due for services "in influencing Mary Neely to change her attitude in her testimony in a law-suit wherein he was charged with murder. * * *" An attempt was made to withdraw this petition upon the indictment of the petitioner for the crime set out in his own petition.

CHAPTER XI

JURIES

GENERAL DISSATISFACTION

THE service performed by juries does not lend itself to appraisal by the statistical method. Without knowing the facts in each case one is not able to conclude whether an acquittal, disagreement, conviction, or verdict was or was not justified. Even if the facts are known, it might well be that reasonable men differ in the inferences to be drawn from such facts. Since it is both impossible and undesirable to retry cases in this survey, one is forced to rely upon opinion evidence as to the quality of service rendered by jurors in Cuyahoga County.

The testimony of judges and lawyers is almost unanimous on the point of dissatisfaction with juries. "I have held court here two months and have never seen a business man on one of my juries," an out-of-town judge is quoted as saying after serving an assignment to Cuyahoga County. "Jurors recruited from the caverns of Ali Baba in the desert," remarked the oldest judge on the bench, with the hearty approbation of a large audience of lawyers.

We have already observed the large percentage of convictions set aside principally because of the poor work of juries. Although no new trial may be granted for error in acquitting a defendant, we may assume that the average jury errs much more on the side of leniency than severity. The community has probably suffered considerably because of this tendency, in view of the fact that acquittals have increased 600 per cent. since 1914. Juries are blamed for the large number of disagreements during the January, 1921, term of the Common Pleas Court. Upon receiving a surprising verdict of acquittal the judge who presided at the trial is quoted as observing to the jury that "it is apparently now lawful to attack a man with an axe, provided the blunt side only is used."

HISTORY

In judging the operation of the jury system, its history in Cuyahoga County should be considered. There is no doubt that opportunities for corruption and actual dishonesty have greatly decreased in recent

years. Lawyers tell the story of a long fight between counsel for the great public service corporations and the personal injury attorneys, in which the jury system was debauched by campaigns for the allegiance of enough jurors to insure victory at the ensuing trials. In those days the jury commissioners made up lists of jurors from names submitted by various persons so that it was a relatively easy matter for an influential corporation or a tort lawyer in large practice to secure picked men on the jury lists. Then in some mysterious manner these names were drawn from the wheel. In the ten-year period from 1905 to 1915, out of a total of 11,126 names placed in the jury wheel, 386 names appeared a total of 2,317 times, or an average of six times each. In the course of the ten years 5,489 names were drawn from the wheel and 388 names were drawn 1,923 times, or nearly 40 per cent. of the total drawn. "It is entirely safe to say, however, that if the drawings had been left to chance, as the law intends, it would have been impossible to have drawn out so many repeaters."¹

THE PRESENT SYSTEM

During the past few years the system has been changed so that many of the glaring defects have been obviated. Under the present method, when the court instructs the jury commissioners to secure a certain number of jurors' names to be placed in the wheel, the commissioners make a rough estimate of the number necessary to call in order to qualify the number requested. The commissioners then roughly divide the total which they must call into the number of electors, and use the quotient as a key number. Thus, if the presiding judge requests 3,500 names for a term, the jury commissioners estimate that it would take 10,000 names to qualify this number, and dividing 10,000 into the total number of electors they secure, for example, the key number 20.² The commissioners then take every twentieth name upon the polling list, and send out a form letter to each name and address checked, asking the addressee to report for examination upon a certain date. Next occurs the first examination of prospective jurors by both commissioners, which proceeds until at least 3,500 names are accepted. The list of those accepted is then certified to the clerk of courts and the list is spread on the journal of the court. The clerk copies the list on slips of paper, and in the

¹ *The Municipal Bulletin*, January, 1916, pages 3 to 6.

² Rule 23 (b) requires that the court designate a key number, but owing to the necessity of securing names from each ward in proportion to its population, the commissioners have adopted their own method of securing a key number.

presence of the jury commissioners the slips are placed in the wheel, the wheel locked, and the key given to the presiding judge, from whom the clerk must get it each time a jury is required to be drawn. Formerly the custody of the key, as well as of the wheel, was given to the clerk, but the change was made when the system was reformed a few years ago.¹

The names once placed in the jury wheel become the sole source of petit juries in both civil and criminal cases, and to some extent of grand juries. The drawings are made by the clerk and sheriff. Every other week the presiding judge orders that a certain number of names be drawn from the wheel as petit jurors, and for each term the presiding judge of the criminal division orders a number of names to be drawn for grand jurors. Separate drawings are made for juries in first degree murder cases, and in such cases the venire must be returned at least fifteen days before the date set for trial. When the original is returned, the clerk draws an *alias venire* without further order of the court, and the alias is composed of two names for every one not found on the original venire. The *alias* is returnable forthwith, and both original and *alias* are served on the defendant and his attorney three full days before the trial. If a jury for the first degree murder trial cannot be secured from the original and the alias, the judge issues further orders until the jury is complete.

In the case of petit jurors, exclusive of first degree murder cases, service is made by letter postpaid and the sheriff's return is stamped upon a paper containing the entire list. In murder cases and for grand juries the sheriff actually serves summonses.

The petit jurors summoned by letter are expected to serve unless excused by the presiding judge. Those who answer the letter and are not excused are sent to the rooms of the jury bailiff, who assigns them to various cases as the need arises. In the case of the grand jury, "if the number is insufficient, the court may issue a special venire to the sheriff and command him to summon the persons named therein and to attend forthwith as grand jurors" (Sec. 11431). Since the original venire drawn from the wheel for grand juries rarely produces enough qualified men, the judge usually selects additional persons, often a majority of the talesmen.

This is the system under which Cleveland juries have been recently selected. Although the personnel of the grand jury is largely dependent upon the presiding judge, this institution is so much a part of the prose-

¹ To the retiring clerk, Mr. Haserodt, much credit is due for the improved operation of the system.

cutting machinery that it is considered in the study of the prosecutor's office. With respect to petit juries, improvements over the older system are: first, substitution of chance for selection upon solicitation; second, reduction of length of service from a term to two weeks, thus reducing the hardship on individual citizens and the opportunities for corruption; third, unlocking the door to the room in which the drawings take place.

WEAKNESSES

The fundamental weakness in the present jury system is inherent in all attempts to make trial by jury work in a great modern city. Personal service by the sheriff or his deputies upon thousands of jurors during the course of the year is impracticable and expensive, and compelling attendance by mailed summonses is difficult. Indeed, the late Judge Foran, in his report on the selection of jurors dated February 28, 1921, doubts whether the present method is a proper compliance with G. C., Sec. 11297-1, providing for substituted service by mail, even granting the validity and effectiveness of that statute.¹ The suggestion that the number of jurors be cut down by extending the term of service for the individual juror again increases the difficulty of securing fit men who can sacrifice so much time from commercial and industrial pursuits. Even with only two weeks to serve, the number of people who are excused by the jury commissioners and the court is disproportionately large.

Another weakness of the system is that there still remains some small margin of discretion in the selection of jurors which is vested in a minor official; namely, the jury bailiff. When a jury is called for, the jury bailiff selects a group from among the idle jurors in his room and sends them down.² No matter how honest a jury bailiff may be, this situation will create suspicions which tend to undermine respect for justice. Lawyers complain that in trying against a public service corporation, for instance, they sometimes find a disproportionate number of its employees on the jury, and, vice versa, in trying against some of the ablest tort lawyers, they find a surprisingly large number of jurors

¹ Judge Foran aptly quotes "*Henry IV*":

"Glendower: 'I can call spirits from the
vasty deep.'

"Hotspur: 'Why, so can I, or so can any
man;—but will they come when
you do call for them?'"

² Rule 23 (9) of the Common Pleas Court directs the jury bailiff to assign jurors in the order in which they are drawn, but apparently practical difficulties have forced the breakdown of this rule.

of the same nationality as the foreign plaintiff. Whether such suspicions are founded upon mere coincidence, or exist only in imagination, the remedy is simple. The names of all jurors waiting to be called should be placed in a jury wheel in the assignment room or in some other public place, and, as new juries are called for, should be drawn from the wheel in the presence of attorneys for all the parties. Some jurors might thus serve more continually than others, but this objection is outweighed by the fact that a feeling of absolute fairness would be created.

The jury commissioners are commanded by G. C., Sec. 11423, to "select such number of judicious and discreet persons, having the qualifications of electors of such county, as the court may direct," and further that "no person shall be selected who shall not, in the judgment of such commissioners, be competent in every respect to serve as a juror." It will thus be seen that, except for certain statutory exemptions, the commissioners are unlimited except as to electors, and in Ohio there is not even a literacy test for electors. To the commissioners falls the task of weeding out of the electors great numbers of foreign-speaking citizens, besides ignorant and shiftless native whites and blacks. Even if the commissioners were well-paid officers and men of large ability, which they are not, the task could scarcely be performed with thoroughness.¹ Hitherto the office of commissioner has been a political trinket, yielding only \$300 per year. The Common Pleas judges made a wise change this spring by appointing as commissioners the two assignment commissioners, Virgil A. Dustin and Archie J. Kennel, both able men. This step should be productive of some improvement.

FIRST EXAMINATION OF JURORS

The failure of the jury system, however, has a deeper cause than any schematic defect. In Cleveland, as in many other large cities, most citizens of means or intelligence avoid service. This avoidance has become traditional, so that it is a kind of mild disgrace for a so-called "respectable citizen" to allow himself to be caught for jury service—like being swindled, for instance. Table 26 shows the results of the letters and preliminary examination by the jury commissioners for

¹ In Boston the preliminary examination is made by the police in a house-to-house canvass. Since in Massachusetts naturalized citizens must be able to read English, the police need only eliminate the morally and physically unfit. Although a policeman is hardly an ideal judge of a juror's qualifications, he has only his own precinct to canvass, which makes the task relatively easier.

the January term, 1921. For purpose of comparison, Wards 11 and 14, largely of shifting white, foreign, and negro population, and the recognized prosperous suburbs of Cleveland Heights, Lakewood, East Cleveland, and Shaker Heights are given separately. The reasons given for the failure to qualify on this examination are those recorded by the commissioners, although some rearrangement has been necessary in order to assimilate kindred excuses into as few classes as possible. Credit is due Thomas Gafney and Gibson H. Robinson, the retiring commissioners, and William H. Ence, their bailiff, for keeping such a record. No record of the kind is available for prior terms.

TABLE 26.—REASONS FOR FAILURE TO QUALIFY OF 6,520 PERSONS CALLED FOR JURY SERVICE, CLASSIFIED BY TYPICAL RESIDENTIAL SECTIONS

Reasons for failure to qualify	Totals	Ward 11 ¹	Ward 14 ²	Cleveland Heights	Lakewood	East Cleveland	Shaker Heights
1. Letters returned	857	48	3	7	8	9	5
2. No answer	1,826	43	27	60	71	30	11
3. Illness, etc.	565	15	8	10	26	15	4
4. Physical disability	220	4	2	5	3	2	..
5. Literacy and language	919	32	18	..	6	..	..
6. Military order, contributing to	16	..	..	2	1	1	..
7. Business	89	2	2	3	2	1	..
8. Home duties	457	10	8	18	27	18	6
9. Financial	7	..	..	..	..	..	..
10. Occupational	634	7	6	19	15	4	3
11. Age	265	7	4	7	11	5	..
12. Served recently	269	1	7	5	4	1	..
13. Away or late	285	7	1	13	17 ³	11	..
14. Deceased	33	2	..	..	..	..	..
15. No explanation	43	2	1	2	..	..	..
16. Serve later	11	..	..	..	..	..	..
17. By judge	16	..	..	..	1	..	..
18. In reformatory	1	..	..	..	..	..	..
19. In jail	1	1	..	..	..	..	..
20. In penitentiary	2	..	..	..	..	..	..
21. Letter from New York attorney	1	..	..	..	..	..	..
22. Not citizen	1	..	..	..	..	..	..
23. Paroled	1	..	..	..	..	..	..
24. Too busy	1	..	..	..	..	..	..
25. Total not qualifying	6,520	181	87	151	192	97	29
26. Total qualifying	3,968	74	58	75	128	69	5
27. Total letters sent	10,488	255	145	226	320	166	34

¹ Colored and shifting.

² Foreign—Poles, other Slavs, and Greeks.

³ Majority were late.

It will be observed that in the four better sections, about 37 per cent. of those who did not qualify simply ignored the summons,—No. 2, “no answer,”—as compared with 28 per cent. for the total—including these suburbs, and 26 per cent. for Wards 11 and 14. In other words, those whose ignorance might excuse them for not responding made a much better showing than the “substantial citizens,” who knew too much to heed the summons. It also seems that the exclusive suburbs are much more unhealthful than the poor districts,—No. 3, “illness, etc.,”—since in those sections 12 per cent. of those who did not qualify were excused because of illness, compared with 8.7 per cent. of the total of Wards 11 and 14. Illness is reported proportionately almost 50 per cent. more often in the most desirable residential districts.

In the four suburbs 9 per cent. of those who did not qualify reported that they were away at the time of the summons,—No. 13, “away or late,”—or received it too late, as compared with 4.4 per cent. of the total, and 3 per cent. in Wards 11 and 14. Since the shifting population in the suburbs is much smaller than in the poorer sections, one may conclude that the excess of excuses of this type represents winter vacations, business trips, or subterfuge.

No conclusion can be drawn from the increase of “home duties” excuses—No. 8—in the suburbs, because most of those excused for this reason were women, and women electors were not called proportionately from the different sections. This was due to the fact that two polling lists were used by the commissioners—an old one before the suffrage amendment was passed, and the new one for 1920. It is to be hoped that women from these and kindred sections will not shirk their jury duties as their husbands and fathers have done. Such women, on the whole, have more leisure than any other group of citizens, and, as a rule, they possess the qualifications of good jurors. Some judges and lawyers already profess to see a higher grade of juries owing to the advent of women. Others, however, feel that the women jurors who have been serving are generally not noticeably superior to male jurors and that their presence has brought neither harm nor benefit to the system.

It should be observed that literacy and language disqualifications were practically unknown in the selected suburbs. Also, it is worth noting that in the suburbs only 6.2 per cent. of those not qualifying could not be located, compared with the general average of 13.1 per cent. “Business,” No. 7, and “financial,” No. 9, represent those excused because their presence was vital to their business, or because they could not afford the financial loss involved in jury service. A large proportion of the “business” excuses were from men operating a “one-

man" business, or if in a country district, a "one-man" farm. A favorite excuse in the rural settlements was that the notice was received "too late,"—No. 13,—reflecting the slowness of the midwinter mails in the country, or the tendency on the part of farmers to call periodically at the local post-office.

"Occupational," No. 10, includes chiefly those excused because employed in occupations exempted by the statute, G. C., Sec. 11444—public officers, clergymen, priests, physicians, police, and firemen. Most of this group were public employees of various kinds.

It is to be noticed that only 16 were excused because "contributing to a military order"—No. 6. Probably among those who failed to answer were additional contributors to such orders, who held this exemption as a secondary defense in case of trouble caused by ignoring the summons. Although the members contributing to military societies number in all only 600,¹ this bizarre method of escape does much harm to the public morale in performing jury service. In effect, it means that influential citizens may purchase immunity from an important civic duty at five dollars a head.

Present statutes exempting contributing members are G. C., Sec. 5195, in substance the original provision, and G. C., Sec. 11444, where contributing members have been recently added as specific exemptions. The section first cited also exempts such members from "labor on the public highways," thus adding a quaint touch of the mediæval "corvée" to the distinction.² This exemption reveals somewhat the decay of democracy. Originally Ohio frontier conditions required that all able-bodied white male citizens be made part of the militia. Then, as conditions settled, a system of volunteer companies developed. In 1857 the members of such companies were excused from jury service or service on roads, 54 O. L. 49-50, Sec. 11. Then came the Civil War draft laws, establishing the principle that immunity from military service might be purchased. Shortly thereafter "contributing members" were added to the personnel of the independent companies, and these non-combatants³ shared in the immunities granted to the others. This anti-

¹ Four societies, numbering 150 members each.

² It exists, however, in rural districts of Ohio.

³ The most recent statute exposes the contributing member to the possibility of performing military duty within the county limits. It is doubtful whether this remote contingency will restrain the jury slackers as a whole from continuing to avail themselves of the exemption. The previous statute, which imposed no obligation on contributing members beyond the payment of a fee, had been held unconstitutional. *Hamann v. Heekin*, 88 O. S. 207 (1913).

democratic exemption ought to be abolished, just as the principle was abolished in the draft laws of the Great War.

THE SECOND EXAMINATION OF JURORS

In addition to the examination before the commissioners, a second opportunity for jurors to escape is granted when qualified jurors are drawn from the wheel and summoned finally for service by mail. The

TABLE 27.—RESULTS OF SECOND EXAMINATION OF JURORS, CLASSIFIED BY WARDS AND OTHER POLITICAL SUBDIVISIONS

Ward	Total serv- ing	Served regu- larly	Post- poned and served	Served part time (ex- cused or post- poned)	Total not serv- ing	Ex- cused	Post- poned, never served	Not found	No record
1	29	20	8	1	5	1	2	1	1
2	53	43	7	3	5	3	1	..	1
3	40	39	1	..	4	..	4	..	..
4	29	24	4	1	4	2	..	2	..
5	36	30	5	1	5	2	2	1	..
6	108	92	13	3	21	13	6	1	1
7	37	32	5	..	8	2	2	3	1
8	25	18	6	1	12	5	4	3	..
9	24	19	5	..	10	2	4	2	2
10	28	27	1	..	8	1	4	2	1
11	32	29	3	..	9	..	7	1	1
12	16	13	3	..	3	..	1	2	..
13	14	13	1	..	3	1	1	1	..
14	20	19	1	..	1	..	..	1	..
15	66	53	10	3	17	2	11	1	3
16	50	46	4	..	14	10	3	..	1
17	23	21	2	..	5	3	1	1	..
18	37	32	5	..	13	6	3	2	2
19	26	21	2	3	10	4	4	2	..
20	14	11	2	1	8	4	3	1	..
21	26	22	3	1	15	6	5	2	2
22	32	27	3	2	10	4	3	1	2
23	27	25	1	1	5	3	..	..	2
24	51	43	8	..	15	7	5	2	1
25	25	21	4	..	14	2	11	1	..
26	55	47	8	..	22	8	8	2	4
DISTRICTS									
East Cleveland	31	25	6	..	7	2	5	..	..
Lakewood	29	26	3	..	10	4	5	1	..
Cleveland Heights	21	18	2	1	6	4	1	1	..
Shaker Heights	1	1	..	..	..	..	..	..	..
Miscellaneous	93	82	10	1	23	11	6	3	3
Not located in any ward	96	71	23	2	46	14	20	11	1
Total	1,194	1,010	159	25	338	126	132	51	29

initiated again ignore the letter. Those who respond may present their excuses to the presiding judge. Table 27, compiled from records in the jury commissioners' office, shows the number excused on this second occasion.

Table 28 is a comparison of the total letters sent out, the number who qualified, the number drawn for service, and the number serving

TABLE 28.—SUMMARY BY SELECTED RESIDENTIAL DISTRICTS OF THE NUMBERS OF JURORS CALLED, QUALIFIED, AND SERVED

Residential districts	Total letters sent out	Total qualified for service	Total drawn for service	Total served regularly	Total served
Ward 11	255	74	41	29	32
Ward 14	145	58	21	19	20
East Cleveland	166	69	38	25	31
Lakewood	310	118	39	26	29
Cleveland Heights	226	75	27	18	21
Shaker Heights	37	5	1	1	1
Total for city	10,448	3,968	1,532	1,010	1,194

regularly and part time. For purposes of comparison, Wards 11 and 14 and the four suburban districts are again listed separately. Of these, Ward 14 makes the best showing, qualifying almost as many as East Cleveland, but showing a higher per cent. serving of those actually drawn.

A summary table of the excuses accepted by the judge is also given (Table 29). This is not classified by wards because some cards were misplaced while tabulating the results and they are not included.

TABLE 29.—REASONS FOR EXCUSING PERSONS FROM JURY SERVICE, JANUARY TERM, 1921 (RECORDS FOR 65 JURORS MISSING)

Illness	40	Served recently	5
Physical disability	7	Away or late	11
Literacy and language	3	No explanation	18
Contributing member of military society	1	Too many jurors	38
Business	7	End of term	6
Home duties	11	Miscellaneous	1
Occupational	11		
Age (old or young)	5	Total	164

OCCUPATION OF JURORS

No record is kept anywhere of the occupation of jurors. Through the courtesy of the presiding judge and the jury bailiff, L. M. Jalos, a

record was kept for four weeks during April and May, at the request of the survey. This is given in Table 30. The occupations listed are those given by the jurors to the jury bailiff, and therefore probably represent the most optimistic appraisal which a man may place upon his own capacities. It means little if a man calls himself a painter, merchant, superintendent, etc., unless more is known about his specific occupation. An attempt has been made to assimilate kindred occupations into general classes, but the grouping probably does not meet all requirements. If so, separate figures are given for each occupation, so that a regrouping is comparatively easy.

TABLE 30.—THE OCCUPATIONS OF JURORS, APRIL 18–MAY 18, 1921,
AS REPORTED BY THEM, BY GROUPS OF RELATED VOCATIONS

	No.	Per cent.		No.	Per cent.
CLASS 1.					
<i>Executive</i>	12	3.0	Salesman	24	..
Office manager	1	..	Clerk	19	..
Department manager	2	..	Telephone operator	2	..
Telephone night manager	1	..	Agent	2	..
Delivery route manager	1	..	Secretary	1	..
Sales manager	2	..	CLASS 6.		
President	1	..	<i>Merchants and tradesmen</i>	22	6.0
Superintendent	4	..	Merchant	5	..
CLASS 2.			Grocer	7	..
<i>Technical and artistic</i>	17	4.0	Butcher	2	..
Draftsman	1	..	Grocery store manager	1	..
Electrical engineer	1	..	Meat dealer	1	..
Civil engineer	5	..	Laundryman	1	..
Chemist	1	..	Baker	4	..
Transportation expert	1	..	Barber	1	..
Artist	2	..	CLASS 7.	3	0.7
Designer	1	..	Saloon-keeper	1	..
CLASS 3.			Hotel-keeper	1	..
<i>Contractors</i>	6	1.5	Poolroom proprietor	1	..
Teaming contractor	2	..	CLASS 8.		
Electrical contractor	1	..	<i>Domestic</i>	41	11.0
Building contractor	2	..	At home	38	..
Auto livery	1	..	Nurse	3	..
CLASS 4.	6	1.5	CLASS 9.		
Insurance agent	2	..	<i>Farmer</i>	8	2.0
Real estate agent	4	..	CLASS 10.		
CLASS 5.			<i>Service employees</i>	20	5.0
<i>Clerical</i>	68	18.0	Chauffeur	4	..
Bookkeeper	5	..	Footman	1	..
Stenographer	5	..	Janitor	1	..
Cashier	2	..	Gardener	3	..
Accountant	3	..	Watchman	5	..
Collector	1	..	Guard	1	..
Teller	1	..	Cook	1	..
Claim agent	1	..	Porter	2	..
Saleslady	1	..	Elevator operator	1	..
			Furnaceman	1	..

TABLE 30.—THE OCCUPATIONS OF JURORS, APRIL 18–MAY 18, 1921, AS REPORTED BY THEM, BY GROUPS OF RELATED VOCATIONS—Continued

	No.	Per cent.		No.	Per cent.
CLASS 11.			Street-car yardman	1	..
<i>Skilled workers</i>	30	10.5	Railroad signal block operator	1	..
Painter	6	..	Telegraph lineman	1	..
Carpenter	16	..	Railroad man	1	..
Electrician	3	..	CLASS 17.		
Decorator	1	..	<i>Metal workers, repairers, laborers</i>	85	22.0
Plumber	2	..	Machine hand	2	..
Mason	1	..	Steel worker	4	..
Enameler	1	..	Pipefitter	1	..
CLASS 12.			Pattern manufacturer	1	..
<i>Needleworkers</i>	7	2.0	Iron chipper	1	..
Furrier	2	..	Welder	1	..
Tailor	3	..	Assembler	2	..
Busshelman	2	..	Iron worker	3	..
CLASS 13.			Temperer	1	..
<i>Special workers</i>	16	4.5	Cable splicer	1	..
Chairmaker	1	..	Sheet-metal worker	2	..
Tentmaker	1	..	Electrical worker	1	..
Potter	1	..	Boilermaker	1	..
Printer	6	..	Boiler-tube welder	1	..
Windowmaker	1	..	Rod-mill worker	1	..
Shade finisher	1	..	Tool grinder	2	..
Artificial limb maker	1	..	Coremaker	1	..
Asbestos worker	1	..	Machine operator	1	..
Movie operator	1	..	Car builder	1	..
Cigar manufacturer	1	..	Machine hand	1	..
Grease maker	1	..	Molder	2	..
CLASS 14.			Solderer tinware	1	..
<i>Foremen</i>	5	1.0	Auto-body builder	1	..
Shop foreman	1	..	Elevator erector	1	..
Dock foreman	1	..	Machinist	18	..
Foreman auto works	1	..	Auto mechanic	2	..
Barn boss	1	..	Car repairman	1	..
Railroad track foreman	1	..	Die and toolmaker	4	..
CLASS 15.			Blacksmith	1	..
<i>Inspectors, etc.</i>	11	3.0	Millwright	3	..
Auto inspector	2	..	Galley man, American Express	1	..
Machinery inspector	1	..	Teamster	4	..
Fire inspector	1	..	Stonecutter	1	..
Street railroad inspector	1	..	Woodworker	1	..
Tool inspector	1	..	Toolmaker	1	..
Car inspector	1	..	Truck driver	4	..
Estimator	1	..	Laborers	10	..
Stock-keeper	3	..	CLASS 18.		
CLASS 16.			Sailor	1	0.2
<i>Engineers, conductors, and allied occupations</i>	28	7.0	CLASS 19.		
Railroad switchman	5	..	Retired	1	0.2
Street-car conductor	5	..			
Engineer	5	..			
Fireman	3	..			
Stationary engineer	5	..			
Brakeman	1	..			
			Grand total	387	..

It may be said that the list of occupations, even allowing for some inflation natural to man's desire for dignity, fairly represents the bulk of Cleveland's population. This is probably true, but a system designed to select for the difficult task of administering justice "judicious and discreet persons, competent in every respect to serve as jurors," does ill to produce even a cross-section of a great unassimilated industrial population. The qualifications for a competent juror are high.

Experience shows that the best juror is a man of integrity and intelligence, with some education and an unwarped outlook on life. Such men are not usually found among the lowest or the highest walks of life. Those who have not the ability to rise to some extent, or are embittered by the experience of poverty, make equally bad jurors with the very rich whose property interests tend to bias judgment. There is little danger to the jury system from the latter group, however, because it is rarely represented on juries, but the former presents a serious problem.

HAVEN OF THE UNEMPLOYED

The winter of 1920-21 coincided with the greatest unemployment since 1914. It is to be assumed that in general, when a factory reduces its force, the least competent workers are laid off first. The action of the presiding judge of the January term, 1921, in permitting jurors to serve an additional two weeks if they desired, and longer on permission of the court, gives some gauge for ascertaining the number of men who preferred \$2 a day on the jury to unemployment. During that term 77 jurors elected to serve more than the regular two weeks.¹ The following list shows the "repeaters" on petit juries in the January term, 1921:

28 served 3 weeks each, equalling 42 juror terms.

9 served 4 weeks each, equalling 18 juror terms.

40 served 12 weeks each, equalling 240 juror terms.

77 jurors served 300 juror terms.

The total number of jurors who actually served during this term was 1,194, leaving a balance of 1,117 jurors who served two weeks and less. Assuming that these jurors served full two-week terms each, we find that 77 jurors (6.4 per cent.) served more than one-fifth of the time, and 40 jurors (3.3 per cent.), nearly one-sixth of the total time! A few of these repeaters may have been retired men who enjoy the experience, but, on the whole, they consisted of men who were tiding over a period of unemployment by attempting to perform one of the most difficult tasks of democratic government at \$2 per day.

¹ From a list supplied by the County Clerk's office.

RECOMMENDATIONS

Trial by jury is guaranteed by the Ohio constitution, and it is inconceivable that the people of Ohio would desire to abolish jury trial even if an amendment could be obtained. As it is now working, however, in large cities like Cleveland, justice in particular cases is being poorly administered and the dignity of the courts generally impaired. The system will not work satisfactorily until the intelligent citizens of the community assume a different attitude towards their obligations of citizenship. No remedy, therefore, will be effective unless the fundamental attitude is changed. It is a platitude, but nevertheless true, that a democracy worth the greatest sacrifices in war is equally worth preserving in peace. Something drastic should be done to dispel the scorn for jury service which has been collecting for many years. The most effective educational campaign might be started at once by an imposing list of prominent and busy citizens of Cleveland pledging themselves to perform jury service when called upon. *Noblesse oblige!*

Other steps to be undertaken are: *First*, the maintenance in office of jury commissioners who take their work with the utmost seriousness, and not as in the past, as a part-time recreation of minor politicians. The appointment of the assignment clerks to the commission should bring about a change for the better, but the court should always maintain close touch with the methods pursued. Real discretion exercised by the jury commissioners in the matter of excluding jurors who have no qualifications except indigence, and in firmly refusing to accept excuses made for the occasion, would certainly result in improving the personnel of the juries. *Second*, the rules of the court and the statutes of the State should be so amended as to insure the validity of service by mail, and the practice maintained in strict conformity with the law. A few fines for contempt of court for failing to respond to mailed summonses would quickly put an end to the present wholesale ignoring of the court's call. *Third*, the legislature should be asked to abolish the exemption of contributing members of military societies. *Fourth*, discretion now resting in the jury bailiff with respect to assigning idle jurors to cases should be eliminated and open selection by chance substituted therefor. *Fifth*, the adoption of the rule recommended by the late Judge Foran providing that judges shall not excuse any citizen called for jury duty except in case of death in his immediate family, or in case of great emergency, where the juror is likely to sustain a serious or irreparable loss if required to perform jury service.

CHAPTER XII

SUMMARY OF RECOMMENDATIONS

ORGANIZATION AND SYSTEM

THE criminal law in Cleveland is administered by three courts. The Court of Appeals reviews cases for errors of law only, and for our purposes may be dismissed from further consideration with the statement that it performs its special duty satisfactorily and gives rise to no particular difficulty. The Court of Common Pleas is the great trial court, with criminal jurisdiction over felonies, that is, over the more serious offenses. The Municipal Court on its criminal side has jurisdiction over misdemeanors, that is, over the lesser offenses, over violations of city ordinances, and over the preliminary hearings in felony cases.

While a lawyer from Mars might fail to understand the reason for this sort of double-decked jurisdiction, based on the more or less arbitrary differentiation between cases in which the punishment may be imprisonment in the penitentiary and those in which such punishment is not lawful, and might wonder why an intelligent community did not marshall and concentrate in a single court all its forces for combating the criminal in order to eliminate the waste and loss of power caused by duplication of effort and overlapping of functions, yet it must be remembered that this dual situation is the result of historic development. Prior to the growth of great industrial cities, when the population was homogeneous and lived in rural communities, serious crimes were rare in occurrence and the business could be attended to by the judges who went around the circuit holding court for a term, that is, for a week or so, in the several county-seats. To provide for a prompt determination of petty offenses and to afford an immediate preliminary hearing in serious cases the system of local courts grew up. The jurisdiction of the lower court was expanded to keep pace with the community it served, and the pressure of business extended the term of the higher court until it was obliged to hold sittings through the year and became a localized court. The final result is two courts substantially alike from any organic point of view, operating entirely independently in the same community. This anom-

alous condition, be it understood, is not the result of evil schemings by any persons or groups of persons: it has been produced by a series of successive developments, each one of which seemed at the time wise and calculated to promote the ends of justice.

These two courts embody within themselves many lessons learned from experience, and, while they unquestionably need improvement to conform to the changed conditions of the city's life, care must be exercised in any adaptation or merger of their functions not to lose the elements of strength which they contain. Double trials on the facts, which are the greatest curse of the double system of courts, have already been eliminated in Cleveland—a forward step which Massachusetts, for example, has never been able to accomplish despite repeated efforts by the bar and judicature commissions.

The Municipal Court possesses a good form of organization. The act which created this court and provided for a Chief Justice with power to order and arrange the business of the court was hailed at the time of its adoption as a great constructive improvement by the most competent legal critics. It still affords a machinery for the efficient dispatch of business far superior to that possessed by the majority of American courts. There is a tendency to decry this form of organization because one Chief Justice lacked the character to utilize it to its best advantage. This is putting the cart before the horse. The requirements for the successful administration of justice are three: sound controlling ideas, sound organization, and sound men. A breakdown proves that one of these conditions has been violated, but it does not follow that the other two were at fault. Any radical alteration (other than that later suggested) of the present form of organization of the Municipal Court would be a step backward and would throw away an accomplishment of which Cleveland should be proud.

The Common Pleas Court, though lacking as excellent an organization as the Municipal Court, possesses power to make its own rules and to regulate its business. It is thus equipped to conduct its work in a reasonably efficient manner. To vest this power in the court is such obvious common sense that the fact would not merit comment except that numerous courts in other jurisdictions have not been given even this much self-government. In this particular, therefore, Cleveland is certainly not below the average condition.

To further facilitate the prompt and orderly dispatch of business the office of Assignment Commissioner has been established. The way has thus been opened for the elimination of the enormous waste of time and productive energy of attorneys, parties, and witnesses waiting for their

cases to be reached, which is a scandal of such venerable antiquity that in many jurisdictions it has been given up as hopeless and is regarded as somehow a necessary adjunct to the judicial system.

To the credit of the County Clerk, the Common Pleas Court has been practically ridden of professional bondsmen. Through a recent statute limiting the number of bonds on which any individual may go surety, and creating the office of Bail Bond Commissioner, this great gain should be effectively retained in the Common Pleas Court and as effectively extended to the cases in the Municipal Court. Thus, one of the worst by-products of our criminal system is being eliminated in Cleveland, although the nefarious traffic is still profitably pursued just outside the portals of many other American courts of justice.

The power lodged in the prosecuting attorney to "nolle pros" a case, that is, to throw a case out of court by saying "I do not wish to prosecute" it, is logically and necessarily a part of the authority which must be vested in that important official. There is, however, today a wide-spread suspicion that the power is perverted in many instances for improper purposes. The full bench of the Massachusetts Supreme Judicial Court has this year heard charges preferred by the Attorney General against a county prosecuting attorney involving alleged abuses of this power.

It is notorious that the records and statistics of many American courts are inefficient and inadequate, and that this unbusiness-like conduct is a productive cause of difficulty. This is in part true in Cleveland, but not as to the work of the County Clerk's office or the Bureau of Criminal Identification, both of which deserve cordial praise for their general excellence.

PERSONNEL: ELECTIONS

The 12 judges of the Court of Common Pleas are nominated by direct primaries and are elected by popular vote. Their tenure of office is only six years. The yearly salary is \$8,000.

The 10 judges of the Municipal Court are nominated by petition and are elected by popular vote. Their tenure of office is only six years. Their yearly salary is \$7,500.¹

The appraisal of the personnel of the bench is so intimately bound up with the difficult question of whether judges can properly be selected by popular vote that it has been given extensive consideration in preceding chapters; but it may here be noted that many of the weaknesses inherent in this method have been attacked in Cleveland and that some progress has been made toward minimizing their dangerous effect.

¹ The salary of the Chief Justice is \$8,000.

All the judges are elected on a non-partisan ballot and non-partisan elections have, in fact, been secured to a very real extent. Despite the traditional ingratitude of democracy, Cleveland has done tolerably well in keeping her judges on the bench either by reëlecting or by promoting them. Of the nine judges elected to the Common Pleas bench since 1912, six were Municipal Court judges; only two Municipal Court judges have failed as candidates for the higher bench. In the Municipal Court only one judge has been defeated for reëlection. In Common Pleas elections all the judges were reëlected in 1916 and 1920, but in other years the record has been almost the reverse.

When one considers the broad outlines of the situation in Cleveland and realizes that the necessary fundamentals for a splendid administration of justice were largely at hand, that by virtue of superior organization and technique her courts were in a position to render conspicuous service to the community through prompt, efficient, and vigorous enforcement of the laws, and that her past record for carrying through large judicial reforms gave promise of a continuing progressive development, it comes as a rude shock and a bitter disappointment to find that in actual operation during the past years this system has been grossly abused and the opportunities wasted almost beyond recall. Because inherently it had such fine possibilities, the actual breakdown of Cleveland's administration of the criminal law is a tragedy.

THE DEFECTS AND EVILS IN THE PRESENT SYSTEM

Disrespect for Law

It has already been stated that of the fundamental factors requisite for a decent administration of justice the underlying and basic element is a sound tradition of respect for law. The most perfect court system could not function long unless it were supported and sustained by good citizenship.

There are distressing signs that Cleveland has been in the throes of reaction and that from the pinnacle of a highly developed sense of civic responsibility she has fallen not merely to the general level, but into depths of apathy and indifference far below. Concrete proof of such an indictment cannot, in the nature of things, be easily afforded except as its truth is recognized and admitted by leading citizens of Cleveland themselves. But to the outsider there are certain objective manifestations which indicate that a deteriorating influence has been at work.

The public plays a direct part in the administration of justice at elections, by jury service, and through the facilities it grants to the courts,

and exercises an indirect, but no less important, influence through an enlightened public opinion which recognizes and sustains what is good and vigorously condemns what is wrong.

When civic pride was strong, Cleveland built her County Court House and City Hall, which afford dignified and adequate accommodations for certain of her courts. Since then the needs of the courts have been given little heed. The Common Pleas Court is forced to work disjointedly and wastefully in two separate buildings, and two of its court-rooms are hardly suitable. The criminal sessions of the Municipal Court are carried on under conditions which are a disgrace.

The jury system, despite its improvement since 1915, remains a constant and most dangerous source of weakness in the judicial system. This is not essentially due to faulty technique in calling or selecting the jurors, but is due to the plain fact that the citizens avoid service in a wholesale manner unheard of in most jurisdictions. It is hard to believe, but it is nevertheless a fact that in Cleveland a citizen may buy immunity from jury service for a nominal sum by contributing to a military organization. For such a condition no condemnation is too severe. The State of Ohio should take to heart the lesson taught by the selective service acts in the Great War that the responsibilities of citizenship in a democracy are not matters for barter and sale.

The giving of false testimony under oath seems to be rife in an unparalleled degree. While the blame for wide-spread perjury attaches in first instance to the public's officials for their failure to cope with it, the final responsibility for this condition which makes a mockery of the processes of law must be laid at the door of a community which produces so many persons willing to violate their oath and which, after it has become fully aware of the situation, goes on about its other business indifferent and unconcerned, tolerating the fact that of 27 persons charged in one year with this and kindred crimes, only one was brought to punishment.¹ Through the centuries the finger of scorn has been pointed at Nero fiddling while Rome burned, but what shall be said of a community which, engaged in private gain, allows the spirit of perjury to stalk unrestrained through its halls of justice?

¹ Since this sentence was written, concrete proof of what a community, under proper leadership, can accomplish through the force of public opinion has been afforded. After McGannon, former Chief Justice of the Municipal Court, was acquitted on the charge of first-degree murder, he and others who were witnesses at the trial were indicted for perjury as a result of a determined public opinion and wise Bar Association action, and on this charge he was convicted.

Evils in Organization

Turning to matters of organization and system, it is apparent that Cleveland, in common with other cities, suffers from an antiquated and cumbersome criminal procedure utterly unsuited to the modern conditions of her industrial urban life. This produces maladjustment, waste, and friction; it places enormous handicaps on society in its effort to defend itself from criminals. Admitting that the protection of the innocent man, unjustly accused, is the most important single consideration, it is still true that his interests and the interests of the community would best be served by a system of few, simple, effective safeguards and checks which would operate equally in all cases. For the average man, and certainly for the man without funds or friends, it would be safer to have one trustworthy refuge, like the cat in *Æsop's* fable, than to have a score of possible escapes, none of which may work. In the fable the fox was caught, but in Cleveland, if he were a professional fox, he would be very likely to escape.

The evil of this overcomplicated system is that it has become unwieldy. It gets enmeshed in its own technicalities and defeats its own purpose. It fosters and makes possible the "professional" criminal lawyer, who finds it worth while to test and tamper with it until he discovers the weak spot through which his client may escape. The system may guarantee immunity for innocence, but it tends also to guarantee immunity for crime. The prosecutor is at a disadvantage before the professional criminal represented by the "professional" criminal lawyer, who can gain victory in any one of eight ways: by a police discharge after arrest, by a "nolle pros" or discharge after preliminary hearing in the Municipal Court, by the grand jury's failure to indict, by "nolle pros" in the Common Pleas Court, by acquittal before the jury, by the granting of a new trial, or by a bench parole. Outside of this curriculum, the system engenders delay, and if enough delay can be gained, the case may have to be dropped for lack of prosecution. Or, finally, as a last resort, bail may be forfeited and the criminal leave for parts unknown. In the retinue of the professional criminal lawyer is the professional bondsman, who is a "runner" in odd moments, and who stands surety on bail bonds aggregating a sum big enough to stagger a surety company,¹ but which occasions him little concern, for he feels quite confident that suit will never be brought to enforce any of the bonds.

The judges are not responsible for this archaic procedure, but in-

¹ The so-called Day Bill, already referred to, limits the number of bonds, and this very recent law, if properly enforced, should entirely change this situation.

stead of trying to make the best of a bad situation, they have made it worse. They cannot be held entirely accountable for failing to check the extensive "nolle prossing" of cases by the prosecuting attorneys, because they have no independent source of information to enable them to act with discrimination, but they are open to severe censure for their laxness with regard to continuances and their abuse of the right to a new trial.

In both courts the passing or continuing of cases is badly handled. The cumulative effect of the delays thus obtained in many instances is to make the case become so stale that no one wants to prosecute it and no witnesses are left with which to prosecute it. Apparently, if the defendant's lawyer can drag a case along for over sixteen weeks, the law of averages will do the rest. As an average proposition in Cleveland, unless the State can bring a criminal to trial within one hundred and fifteen days his case will be "nolle prossed" or discharged on motion or dismissed for want of prosecution.

It is shocking to the sense of a lawyer to learn how the judges grant new trials for purposes utterly distinct from the solemn purpose for which the right to new trial is embodied in our law. The power of the court to grant a new trial exists to prevent gross miscarriage of justice, as where newly discovered evidence indicates the serious possibility of error or where the judge feels bound by the oath of his office to countermand the jury's verdict as being contrary to the law or the evidence. Instead of keeping this high prerogative of justice inviolate, it has been prostituted apparently for the purpose of allowing individual judges to work out their individual ideas as to the proper disposition of a case. To grant a "new" trial when there has been *no* trial because the defendant pleaded guilty is an abuse of judicial power. To grant a new trial after a conviction for a definite offense, with no idea of having a new trial, but in order to accept a plea of guilty for a lesser offense, is usurpation of power. This is not administering justice according to law, and judges who thus depart from their plain duty must expect to have their motives attacked and to encounter a diminished respect for themselves and their office.

Similarly, the judges of the Municipal Court who allow "motions in mitigation" and then retract or reduce sentences imposed after a finding of guilty are rapidly undermining public confidence in the integrity of the legal system. This "motion in mitigation" is an anomaly. After the determination of guilt, a judge should impose sentence only after he has decided what is just, and having made the decision, should abide by it. A judge who sentences a man before he has made up his mind

and a judge who cannot make up his mind are both unfit for judicial office.

It would seem that the decadence of the general public spirit had affected the judges and sapped their spirit of courage and independence. Perjury committed in open court has passed without challenge. A lying witness should be stopped short and warned, and failure to heed the warning should be summarily punished by imprisonment for contempt. In the case of Bar Association v. Sleeper, a recent proceeding against an attorney in Massachusetts, the Justice of the Supreme Judicial Court who heard the case became convinced that the defendant was deliberately giving false testimony and disbarred him. This is, perhaps, an extreme illustration but it serves to demonstrate how much a fearless and strong judiciary can do, and on occasion ought to do, in sternly repressing the ever-present menace of perjury.

The judges have been entirely too free in granting paroles, but the real difficulty here is that Cleveland has provided the Municipal Court with a grossly inadequate probation force and the Common Pleas Court with no probation staff at all. A strong probation force of character and intelligence is universally recognized as an indispensable auxiliary department of a modern criminal court. Nearly everywhere the principle of effective probation work is established, but Cleveland is in this respect a decade behind other cities and is paying the penalty. In Cleveland the fact is ignored that the criminal courts exist not only to separate the guilty from the innocent, but to segregate out from among the guilty those who are professional criminals in order to restrain them. In the warfare which society must continually wage against crime, the courts are the outposts. The criminal who breaks through or escapes from that first line of defense cannot be apprehended until *after* he has committed another crime. In the absence of the intelligence service which a trained probation force can supply, the courts cannot and do not deal effectively with the habitual criminal. Cleveland has become known to the underworld as a snug harbor and she pays dearly for this unenviable reputation, as the fast mounting record of arrests for felonies bears witness.

It is perhaps not surprising that a system which tolerates these abuses should rush to the opposite extreme and deal harshly with persons who are not criminals and are not even accused of crime. In Cleveland today men who are needed as witnesses and whose only fault is poverty are put in jail and kept in jail for weeks and months. Except in most unusual circumstances, to deprive a man of his liberty in this way is a downright outrage. A bench, a bar, a community too callous to rise in pro-

test against such a practice, even if it be rare, must have forgotten or lost in marked degree the instinctive American sense of fair play.

The business of the courts is not transacted with the dignity and decorum demanded by the seriousness of their work. Disorderly conduct among witnesses and spectators that calls for sharp reprimand is not checked. The attitude of respect and reverence is so dependent on proper physical surroundings that inevitably there is least dignity in the criminal sessions of the Municipal Court, which are held in unclean, untidy, ill-arranged rooms. Here come the first offenders and immigrant offenders and here they receive their first impression of the majesty of the law. A justice of the Supreme Court of the United States could not long maintain dignity in such quarters, for no nervous system can withstand the pressure of such an environment.

The clerk's office of the Municipal Court for criminal business is not better accommodated and doubtless this fact accounts in large measure for the inaccuracy and inadequacy of the records and for the disorderly state of the lists.

Personnel: Politics

The average quality of the personnel of the judiciary is not as high as is needed for a proper administration of justice. There are judges sitting who ought not to be on the bench in Cleveland or anywhere else. The morale, or what lawyers would call the "tone," of the bench is weak.

While it may be true that the judges of the Common Pleas Court are not markedly inferior to the general caliber of judges chosen elsewhere by the methods of popular election now in vogue, this standard of comparison is not high enough to afford ground for much reassurance. In the Municipal Court, where the disintegrating forces seem first to have had their effect, the situation is worse, and Cleveland has very recently been forced to oust from this court one judge who was bringing opprobrium on the entire bench.

This condition is due partly to the comparatively short tenure of office, but it is primarily and chiefly attributable to the method by which the judges are selected.

Presently we must consider how far it is true that popular election of judges is at the root of most of the trouble in Cleveland on the ground that such a method is bound to produce inferior judges. But even assuming for the moment that the people may, under proper circumstances, select their judges wisely, it is obvious that the particular method employed in Cleveland, despite certain good features, is operating badly.

The short tenure requires the judges to campaign frequently, and as they always have to face vigorous competition, they are forced to cam-

paigned strenuously or risk retirement. Thus, the most damaging and most dangerous features of the elective method are not only given full play but are intensified. In the course of such electioneering the judges are forced to speak and act in a manner inconsistent with and repugnant to any decent conception of judicial office. With the bogey of reelection constantly hovering in the foreground, the covert pressure exerted by groups and organizations cannot be disregarded as it should be. The political lawyer, with his control of votes, becomes a man of importance, to be placated if possible. As his potential competitors at the next election who are off the bench are continually striving to create and develop their own influence in the community, the judge on the bench must do likewise. He must become known, his name must be seen in the papers, and therefore he gets an assignment to sit in the criminal sessions of the court because criminal cases have superior news value. The doing of justice forbids the granting or receiving of favors, but in an open election the judge must beg for votes and, after he has lost his private practice through years of service on the bench, he must beg hard. It is next to impossible to make an effective political speech without at least impliedly promising something to somebody. Such conditions destroy scruples and cause a progressive deterioration from bad to worse, so that in Cleveland today we find judges permitting the solicitation of campaign funds from lawyers who practise before them and the insertion of large paid advertisements of themselves in the papers. In one instance, a judge has assumed to administer justice in a court-room adorned with political placards urging all those in attendance to vote for him.

The method of selecting judges now obtaining in Cleveland puts a premium on self-advertisement and compels the currying of favor. It is thoroughly bad. Its immediate correction is a problem of outstanding importance.

SUGGESTIONS AND RECOMMENDATIONS

In the preceding pages an effort has been made to point out the more important defects in Cleveland's administration of criminal justice, and it is now in order to consider what definite, feasible, constructive things may be done to eliminate or abate these evils. Recommendations as to many details are contained in the main report in their appropriate places; it is attempted here to present only those suggestions which, by reason of their larger import, call for special attention and discussion.

There is no panacea for the existing ills nor is there any royal road to democratic self-improvement. These suggestions will not bring

about the millennium, but they are respectfully offered in the firm belief that their adoption will effect substantial and genuine improvements.

As to Personnel

The needed improvement in personnel cannot be effected by lopping off a head here and there and trusting to luck for the future. The only permanent way to secure better judges is by devising a better method for selecting them and keeping them after they have been selected.

It is the consensus of opinion of the bar and the unanimous conviction of the ablest students of our legal institutions that strong and well-qualified judges are most certainly secured when they are appointed by the Executive and hold office for life, subject, of course, to removal for misconduct. On the evidence, there is every reason to believe that this method of selection, or a modification of it, plus long tenure, would do more than anything else to revolutionize the present state of affairs. If it be within the field of possibility, this is unquestionably the goal to be striven for. On the other hand, one cannot ignore the fact that in this matter, as in matters affecting standards of admission to practice, the bar does not seem to possess public confidence and is unable to gain acceptance of its views. On this point there is a gulf of misunderstanding between laymen and lawyers that has not been bridged. The body of the people seem determined to retain the power of selecting their judges, and wherever that is so, the only practical step is to make the elective system operate at its maximum possible efficiency.

Within the limits insisted on by the democratic impulse, much can be done. Almost every conceivable method of selecting judges has been tried in the various States and, as Dean James Parker Hall made clear in his address before the Ohio Bar Association in 1915, each method can point to a success in some State. As an extreme illustration, judges are elected in Vermont by the legislature for two-year terms. Theoretically this is as bad a plan as could be devised; but actually in Vermont good judges are chosen and hold office for life. Popular election of judges has done splendidly in Wisconsin, where the tradition has grown up of steadily reelecting the judges.

The secret in obtaining good judges is that back of the method—whatever it is—there must be a tradition which makes the selecting group realize that it is clear public policy to retain judges in office except for grave mental, moral, or physical defects. This tradition has been built up in New York, Wisconsin, Vermont, Connecticut, and elsewhere, but seems not to exist in Cleveland (with the exception, strangely enough, of the Probate Court), and it cannot be secured overnight. Its growth may, however, be aided.

To that end the following principles should be incorporated into the elective system, if that is to be retained in Cleveland. Judges in first instance should be elected as they are now. Their first term should be comparatively short, say, six years. At the end of that time they should run for reelection for a longer term of, say, ten or twelve years, and for this purpose they should run *against their own record*, not against a motley group of other candidates. In other words, the voters decide a plain issue: Shall the judge be retired or shall he be retained? The third term should be even longer and consist of, say, twenty years. In the event of the retirement of a judge a special election, in which he could not be a candidate, would be held.

Such a plan will reduce very greatly the amount of electioneering and the constant interruption of judicial work thereby occasioned. For a judge to run against his own record is infinitely less degrading than the scramble for votes in the open field. The question of reelection or retirement will be an issue of moment and on it all the responsible agencies in the community can focus their attention.

The tendency will clearly be to retain judges in office; the average tenure will be substantially longer. The enormous advantage of the longer tenure is this: There is a splendid tradition of service, the heritage of centuries, which attaches to the judicial office and which elevates every man who takes the oath of that office. This tradition, constantly at work, plus the experience gained as the years go by, takes inferior men, if need be, and develops them into superior judges.

The method suggested in no respect deprives the community of its right to select its own servants and to discharge those with whom it is dissatisfied. For that reason it is a feasible method. And, as it is calculated to make the method of popular election operate at maximum instead of mediocre efficiency, it would give results.

It is pertinent to ask whether the elective method has ever had a fair chance to demonstrate how much it could do. For the determination of all other questions by popular vote the tremendous organization and work of the political parties is required. Without them all voting would be blind. In judicial elections, partisan activities have quite properly been eliminated. This tends to leave the voters entirely in the dark, to be enlightened only by the mirage of cheap publicity. Democracy demands responsible leadership. Under the suggested plan, wise leadership is the only hope for securing competent judges in first instance. It may well be that the most effective guidance would come from the party heads, the bar, and perhaps representatives of other organizations acting in concert to decide upon and support the best available candidates; but

here, as in all judicial issues, the predominating influence should come from the bar. A hitherto disorganized bar which has not taken itself seriously cannot wonder that the public has declined to follow its weak leadership. But there is every reason to believe that a well-integrated bar, such as is now taking shape in Cleveland, conscious of its public obligations, would build up a record of public service by keeping its own house in order and, by promoting the better administration of justice, would win the public respect and confidence which underlie the acceptance of leadership. It must be remembered that despite all the hue and cry and jokes about the profession the individual man will, when the occasion arises, place absolute confidence in the individual lawyer. Were this not so the legal business of the community would have been taken out of the hands of lawyers long ago. But for leadership the bar must act collectively, and until recently the bar has not felt the sense of its own solidarity or the sense of its responsibility as a group.

The Cleveland Bar Association is today in many respects one of the best associations in the United States. It should continue along the lines of its present development. In the selection of former Judge McGannon's successor its voice was heard and heeded. The above outlined plan would give it a real opportunity to throw the full weight of its combined influence in the right direction as the issues of election and reelection of judges come before the people.

As to Organization

In considering recommendations for improved organization it must be remembered that system is a servant and not a master. Good men can give good government despite the handicap of weak organization. Bad men can produce nothing but bad government no matter how efficient the system may be. In judicial affairs system exists for the same purposes and plays exactly the same part as in business affairs. It is designed to make work more efficient by eliminating waste effort and friction, to afford those records which make possible unified control and wise direction through an executive head, and to secure and compile the facts as to the undertaking, its assets and liabilities, which yield the needed information for the guidance of the public.

1. In organizing itself promptly to detect and adequately to restrain the criminal, it is plain common-sense strategy for the community to marshal all its forces in one court. A unified court for the transaction of all criminal business, as has been established in Detroit, is strongly recommended because it is bound to be superior to split jurisdictions, divided responsibility, and uncoordinated effort.

To accomplish this result in Cleveland a *new* court is not needed: all the criminal business of the Municipal Court can be transferred to the existing (and additional) sessions of the Common Pleas Court.

If this entire step is not deemed immediately practicable, then the next best thing is to transfer to the Common Pleas Court *complete* jurisdiction over felonies by taking out of the Municipal Court the preliminary stages and the preliminary hearing. This would at once eliminate the worst duplication in the present system and would relieve the Municipal Court judges, who now have entirely too many cases to be able to give them proper attention.

The Common Pleas Court should be given a thoroughly modern form of organization, with complete power to make its own rules of procedure and control its own business, under the supervision and leadership of a permanent Chief Justice. The present plan of rotation has all the weaknesses of the old Roman plan of two consuls alternating in power. Definite responsibility is nowhere. The essential importance of this form of organization will steadily be seen in connection with subsequent recommendations.

2. Provision should at once be made for the establishment of an adequate probation staff, including medical advisers, either for a unified court or for both the present courts. The personnel should be appointed by the Chief Justice or respective Chief Justices to hold office during good behavior. To the probation force should be committed the task of collecting fines, non-support orders, and the technical custody of persons adjudged guilty who need actual supervision but not imprisonment. The courts should have power simply to put the case on probation, or to impose sentence, suspend sentence, and put the defendant on probation; for breach of the terms of probation the punishment is the automatic execution of the original sentence. The details for the organization of the staff should be worked out by a committee of the Bar Association in conference with the National Association of Probation Officers.

3. The abuse in the granting of new trials and continuances cannot wisely be stopped by depriving the court of all power to order any new trials or continuances. Such matters must always be left to the sound discretion of the judges. But the disastrous tendency toward laxness and carelessness in the exercise of this discretion, as well as personal laziness, which is the product of the present loose, irresponsible organization in the Common Pleas Court and the demoralization of the organization of the Municipal Court, can be speedily curbed by the determination of a Chief Justice who can get at the facts and call on an offending judge for an explanation. A thoroughgoing system of records, such as

obtains in the New York City Magistrates' Court, will enable a Chief Justice to detect promptly and to stop such abuse of judicial power. And in this task the Chief Justice should have the coöperation of a Bar Association committee on the administration of justice which can, through a professional secretary, keep its own vigilant watch on the situation.

4. Further safeguards should be thrown about the use of the *nolle prosequi*. The motion should be filed like any other motion, and should specify the prosecutor's reasons for declining to prosecute. This change should be effected by rule of court, and it should always be in the courts' further discretion whether the complaining witness should be notified and whether there should be general notice by publication.

It would clear the prevailing atmosphere if the court should immediately promulgate a rule providing (1) at least seven days' notice to the complaining witness and the Bureau of Criminal Identification of the filing of every such motion, and (2) definite days for the hearing and determination in open court of such motions. This rather rigid rule of procedure could be altered when circumstances altered.

5. The practice of jailing complaining witnesses in default of bail should be abandoned. Such witnesses should be released on their personal recognizance except in cases where the Chief Justice or acting Chief Justice orders otherwise for cause shown at a hearing in which the witness is represented by counsel. As, by hypothesis, these persons are indigent they must be afforded counsel at public expense.

6. The assigned counsel system should give way to the more modern, more efficient, more economical "public defender" system. The greater success attending the assignment of all cases of all accused poor persons to one central responsible agency has been demonstrated in Los Angeles. The legislature of California, in its last session, made provision for extending this system throughout the State. Because of the generally upset conditions in Cleveland it is recommended that, for the time being at least, this work be entrusted to quasi-public, rather than public, hands. The precedent of the New York Voluntary Defenders' Committee is applicable. To accomplish this improvement neither a statute nor an appropriation is required. The work of representing poor persons in criminal cases is so closely analogous to the work of representing poor persons in civil cases, now undertaken by the Legal Aid Society, that the two functions should be combined in one agency, as has been done in New York. This one legal aid organization should be created, supervised, and controlled by a special committee of the Bar Association which is the properly responsible body. Having available such an organization,

the courts could, and, if the organization merited confidence, would assign to its attorney, in charge of its criminal work, all the cases now entrusted to assigned counsel. In view of the general experience throughout the country it would be surprising if a budget of \$32,500 (the cost of assigned counsel in 1920) did not enable such an organization to handle 528 cases, of which only 194 required trial, more efficiently and justly than they are now handled. To this quasi-public defender office the Municipal Court judges could refer cases when, in their opinion, the defendants needed counsel for a fair trial. This office would, in cooperation with the probation staff, be of material assistance in securing that information which the court needs to arrive at a just sentence. Finally, such an organization, through its constant contact with the criminal work of the courts and through its reports, would be the sort of guardian and watcher which is essential if the public is to be kept intelligently informed of what goes on in its legal institutions.

7. The provision of law exempting citizens from jury duty for contributing to military organizations should be repealed forthwith.

8. Whether or not the seemingly useless method of indictment by grand jury should be retained is only a part of the major problem of the reform of our whole criminal procedure. Our criminal procedure everywhere lags behind the civil. The only available safe path of progress seems to be the step by step process of constant experimentation, revision, and adaptation. Such work calls for a Judicial Council, a perpetual body, consisting of not less than five and not more than 15 judges and lawyers appointed by the Chief Justices and holding office during their pleasure. If a Judicial Council can be secured, it is of minor importance whether that body has rule-making power or merely advisory power. A Judicial Council, which is a permanent commission on judicature, serves to connect up all the parts of the judicial system which, for many reasons, it is impossible to coördinate through amalgamation. As it affords a clearing-house of ideas, it becomes the advisory steering committee for the judicial business as a whole. Roughly, it is analogous to the board of directors in a large industrial company. The growing realization that only through some such body can our courts be brought up to date *and kept up to date* is well attested by the fact that the Massachusetts Judicature Commission in its 1921 report emphasizes the need for a Judicial Council as its cardinal recommendation. The conferences which are now held in Cleveland from time to time between representatives of the Bar Association and the judges constitute a laudable step in this direction.

The recommendations of a Judicial Council would be worked out in coöperation with other agencies in the community and would be presented to the courts, the bar, the legislature, or the public, as the case might be. Its recommendations would have the supreme merit of being based on a *continuous* study of the administration of justice. This is the converse of the method heretofore followed in America. The community has paid exclusive attention to its business affairs and has left its institutions to care for themselves, to stagnate, to be outgrown, or to become archaic as the life which these institutions were supposed to regulate rapidly altered its character and complexion in every particular. Periodically, when conditions became absolutely unbearable, a momentary attention would be given to the matter, a wave of reform would sweep the community, changes would be made with pathetic confidence that at last perfection had been attained, then interest would wane, the current of our national life would sweep swiftly on, growing, altering, and developing, and in a few years the whole process would have to be repeated. If all the recommendations herein made had the power to give Cleveland a perfect administration of justice and were adopted tomorrow, in ten years' time the courts would again show signs of breaking down. This is inevitable. Law regulates life. Life is constantly in flux and it will break down any static organization. To keep our legal institutions abreast of the times the formation of a Judicial Council is earnestly recommended.

9. Assuming that the Municipal Court is to retain a portion of criminal jurisdiction, then steps should be taken to recognize the fact that it is a court of equal dignity, responsibility, and importance with the Court of Common Pleas. It is not an "inferior" court, nor does its business consist of "petty" cases. In its work for the prevention of crime and the inculcation of respect for our institutions, it is the supreme court in importance if not in rank. The judges of the Municipal Court should be selected under the plan earlier suggested; and they should be paid as much as the judges of the Court of Common Pleas.

10. The city should at once furnish not merely decent but really suitable accommodations, so that the criminal sessions and the criminal division of the clerk's office may be housed in a manner compatible with the dignity of their work.

The system of clerks' records should be modernized. Primarily the ledger or docket system should be employed, and on the page assigned to each case (entered numerically and cross-indexed alphabetically) all the facts in the history of the case should be entered. Through the use of standardized headings, which is easily possible because all cases follow

the same general routine, it then becomes feasible without enormous labor to draw off and compile those general controlling facts and tables which enable a Chief Justice actually to be an executive head and which the public are entitled to have interpreted and reported to them through court reports and the press. Although the detail of a clerk's office must be left to the clerk, it is important that the process of revising should get down to details and that all such slack practices as the stamping of *both* judges' names on the docket—which is nothing more or less than a false record—should be eliminated.

11. The elimination of the "shyster" lawyer who gets his cases through "runners" is difficult. Of all methods that have been tried, the work of the public defender in Los Angeles is the most efficacious and, therefore, if a proper quasi-public defender office is established in Cleveland, it is reasonable to suppose that the nefarious business of the "runners" may be curtailed to the point where it will no longer be profitable. The "shyster" lawyer, in so far as he transgresses the law or the ethics of the profession by solicitation, must be dealt with by the Bar Association.

12. This evil, as well as that of the professional bondsman, can automatically be further reduced by the proper use of the summons instead of an arrest in cases involving minor offenses and violation of city ordinances.

13. The peculiar proceeding used in the Municipal Court called the "motion in mitigation" has no place in a proper administration of justice and should be abolished.

Civic Responsibility

A persistent effort has been made in all these pages to bring home the fact that the tradition of respect for law and of civic pride in our legal institutions is by far the most compelling force for justice. Tradition is our heritage of social experience. It is the conscience of the group, and it affects every citizen, every witness, every lawyer, every judge in the community. Like conscience, it becomes dulled through scorn and neglect.

Cleveland's traditional spirit and sense of civic responsibility must be awakened. Brass bands will not do it, but through education and the actual undertaking of work for the public much good may be accomplished. Let the leaders of the community lead. There are at least two points where an immediate attack may be begun. If the public conscience refuses to condone perjury, convictions will follow. Extended perjury cannot exist without some lawyers taking some part in it. A lawyer who knowingly permits perjury to be committed in court is a false

minister of justice and it is the duty of the Bar Association to disbar him. Jury service must become again an accepted civic responsibility. It might serve the purpose for the Chamber of Commerce, the Civic League, the labor unions, and other organizations professing an interest in public welfare to compare jointly their membership lists with the lists of the jury commissioners to determine how many of their members fail to qualify for jury service and why.

No outsider can hope to do more than to try to point the way. For all these recommendations there must be supplied by Cleveland men those details which are always required for the successful adaptation of general principles to particular local conditions.

Here is a definite call for immediate, practical public service. To study, digest, and weigh these recommendations requires patient, self-sacrificing effort, and actually to apply those which commend themselves will require courage and persistent effort. If this task is earnestly undertaken by the community, it may be that from the very undertaking will begin a resurgence of the tradition of civic pride that in former years gave Cleveland her preëminence.

PROSECUTION



B. ALFRED BETTMAN

PART II
OF THE CLEVELAND FOUNDATION SURVEY OF
CRIMINAL JUSTICE IN CLEVELAND

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OF THE CINCINNATI BAR

ASSISTED BY
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OF THE CLEVELAND BAR



PART II
OF THE CLEVELAND FOUNDATION SURVEY OF
CRIMINAL JUSTICE IN CLEVELAND

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FOREWORD

THIS is the second section of the reports of the Cleveland Foundation Survey of Criminal Justice in Cleveland. The first was on The Criminal Courts, by Reginald Heber Smith, assisted by Herbert B. Ehrmann. Other reports to be published are:

Police, by Raymond Fosdick

The Treatment of the Convicted, by Burdette G. Lewis

Medical Science and Criminal Justice, by Dr. Herman M. Adler

Newspapers and Criminal Justice, by M. K. Wischart

Legal Education of the Cleveland Bar, by Albert M. Kales

Criminal Justice in Cleveland, a Summary, by Roscoe Pound

The reports are being published first in separate form, each bound in paper. About November 1 they will be available in a single volume, cloth bound. Orders for subsequent separate reports or the bound volume may be left with book-stores or with the Cleveland Foundation, 1202 Swetland Building.

PREFATORY NOTE

IN presenting this report of the Division of Prosecution of this survey, I desire to acknowledge the uniform courtesy accorded to me by Prosecuting Attorney Edward C. Stanton, Chief Municipal Prosecutor Oscar Bell, and their assistants on the many occasions when I went to them for information. Every request for information or for permission to examine their files was graciously received and granted. We met with the same uniform courtesy and willingness on the part of all the officials of the clerks' offices and the other city and county departments engaged in the administration of justice.

I also desire to take this opportunity to thank the members of the Advisory Committee of the Cleveland Foundation, to whom we could always turn for both information and advice. To Mr. Amos Burt Thompson, the Chairman of that Committee, a special expression of gratitude is certainly due, both from ourselves and from the people of Cleveland. He gave unsparingly of his time and thought, and whatever of value there may be in this report would have been impossible without the patient and constant service which he rendered.

Mr. Howard F. Burns, Attorney-at-Law of Cleveland, is to be credited with the field work for this report. He explored and gathered most of the data set forth in it. More than that, he gave to the work most valuable initiative and ingenuity. If this report proves to be useful in improving the administration of criminal justice in Cleveland, a very large share of the credit belongs to him.

In general, I desire to express appreciation for the uniform patience and courtesy which I received from all judges, lawyers, and other citizens of Cleveland.

In almost every paragraph of this report where some statement is made critical of some feature of the enforcement of criminal law in Cleveland there might truthfully be added some such expression as "like other American cities" or "this is equally true of other American cities." This expression was omitted, firstly, because the repetition of it would have become tiresome, and, secondly, because the work assigned to us was not a survey of the administration of justice in the United States,

but in Cleveland. I am using this prefatory note to remove any impression which the report might create that in respect to matters which have been criticized Cleveland forms an exception among American cities. Cleveland was willing to be surveyed, to have the faults of its administration of criminal justice pointed out—which places it in advance of most other American cities.

ALFRED BETTMAN

TABLE OF CONTENTS

	PAGE
FOREWORD	v
PREFATORY NOTE	vii
LIST OF TABLES	xi
LIST OF DIAGRAMS	xii
 CHAPTER	
I. THE PLACE OF PROSECUTION IN CRIMINAL JUSTICE	1
Some Fundamental Assumptions	1
The System in Outline	2
Prime Importance of Municipal Court and Prosecutor	3
II. CASE MORTALITY	5
The Story Told by Statistics	5
The Mortality Tables	7
What Becomes of the Felony Cases	7
III. THE MUNICIPAL COURT IN OPERATION	13
Large Number of Cases; Unclassified Dockets; Excessive Speed	26
Negative Part Played by Prosecutor	30
No Stenographic Reports—Opportunities for Perjury	32
IV. THE MUNICIPAL PROSECUTOR'S OFFICE	33
History	33
Office Organization	34
Laxity in Custody of Affidavits	35
Record System	36
Personnel	48
V. OPERATION OF THE MUNICIPAL PROSECUTOR'S OFFICE	51
The Affidavit	51
Sifting of Cases	52
County Prosecutor Does Not Participate in Early Stages of Case	54
Cases in Appellate Courts	55
Statistics of Results of Cases	56
Dispositions Without Trial	58
"No Papers" or "No-papering"	59
Nolles	60
Acceptance of Pleas of Lesser Offense	65
Suspension of Sentences	66
Mitigation of Sentences	69
The Bail Bond	70
Hours of Work; Private Practice	72
VI. THE COUNTY PROSECUTOR'S OFFICE	75
History	75
Criminal Court in Operation	76

CHAPTER	PAGE
Office Organization	78
Record System	79
Personnel	79
VII. OPERATION OF THE COUNTY PROSECUTOR'S OFFICE	83
Preparation of Cases	83
Assignment of Cases	89
The Grand Jury	89
Statistics of Results of Cases	93
"No-billed" Cases	93
Nolles and Acceptances of Pleas of Lesser Offenses	94
Suspension of Sentences	96
The Bail Bond	98
Forfeited Bonds	99
Cases in the Appellate Court	101
VIII. THE FEDERAL COURT AND UNITED STATES ATTORNEY	102
Comparison is Possible	102
IX. THE LESSONS AND THE REMEDIES	106
General Considerations	106
The Municipal Prosecutors	108
The County Prosecutor	111
Municipal Court Procedure	112
The Segregation of Trials or Calendars	113
Arrest and Summons	116
Stenographic Report of Testimony	117
General Aspect of the Trials	118
Record Systems in Municipal Court and Prosecutor's Office	119
Disposition of Cases by the Prosecutor Himself	119
Conciliation by the Prosecutor	119
"No Papers"	120
Nolles	121
"No Bills"	121
Acceptance of Lesser Pleas	121
Suspension and Mitigation of Sentences	122
The Preparation of Cases	122
The Grand Jury	124
Simplification of the Bail Bond System	126
The Place Where Criminal Justice is Administered	127
Salaries, Terms, and Selection of Personnel	127
X. THE BAR AND THE COMMUNITY	130
The Bar	130
Criminal Practice and the Bar	132
The Duty and Responsibility of the Bar	133
The Community	136

LIST OF TABLES

TABLE	PAGE
1. Mortality Table of City Misdemeanor Cases, 1919-1920	7
2. Mortality Table of State Misdemeanor Cases, 1919-1920	9
3. Mortality Table of Felony Cases, 1919	11
4. Prosecutions for Perjury and Subornation of Perjury	31
5. Comparison of Growth of Population, Number of Arrests, Number and Salaries of "Police Court" Prosecutors, 1863 to 1920	33
6. Outcome of Cases Carried to the Court of Appeals, 1919 and 1920; Classified According to the Filing of Briefs	56
7. City Cases, Municipal Court, 1919-20; Disposition of Cases Classified by Charges	57
8. State Cases, Municipal Court, 1919-20; Disposition of Cases Classified by Charges	57
9. State Examinations, Municipal Court, 1919-20; Disposition of Cases Classified by Charges	58
10. State Cases Classified by Charges and by Dispositions and Degree of Suspension of Sentences	67
11. City Cases Classified by Charges and by Dispositions and Degree of Suspension of Sentences	68
12. Sentences Classified by Types and by Degree of Suspension, State Cases	68
13. Sentences Classified by Types and by Degree of Suspension, City Cases	69
14. Number and Outcome of Suits upon Forfeited Bonds	71
15. Comparison of Growth of the Population and Number of Arrests, with the Number and Salaries of the County Prosecutor's Staff, 1863-1921	75
16. All Indicted Cases, Common Pleas Court, 1919, Classified by the Prosecutor in Charge and by the Disposition	81
17. Average Number of Days Used in Disposing of Cases Originating in the Several Courts, Common Pleas Court, 1919	84
18. Cases in the Common Pleas Court, 1919, Classified by Disposition and by the Number of Days (A) from Arrest to Disposition, (B) from Indictment to Disposition, and (C) from Arrest to Indictment, Grouped According to the Origin of the Cases	85
19. Accumulation of Work in Common Pleas Court During Summer Vacations, 1916-1920	86-87
20. Number of Grand Jurors Appointed by Presiding Judge from Sources Other than the Original Panel	90
21. Number of Original Panel and Judge Selections (25 Men in Panel for Each Term)	91
22. All Cases in the Common Pleas Court, 1919, Classified by Dispositions and Types of Offenses	92

TABLE	PAGE
23A. Common Pleas Court, 1919; Sentences Classified by Type and by Execution and Suspension	96
23B. Common Pleas Court, 1919; Sentences Classified by Type and by Execution and Suspension; Percentages	97
24A. Common Pleas Court, 1921; Sentences Classified by Type and by Execution and Suspension	97
24B. Common Pleas Court, 1921; Sentences Classified by Type and by Execution and Suspension; Percentages	97
25. Summary of Cases on the "Complaint Docket" of the United States District Attorney for Year Ending June 30, 1920	104
EXHIBIT A.—Police Blotter	37
EXHIBIT B.—Prosecutor's Docket	38
EXHIBIT C.—Assignment of Cases, Tuesday, May 24, 1921	38
EXHIBIT D.—Docket—Room 2	39
EXHIBIT E.—Judge's Docket, Vol. 50—Room 1	40
EXHIBIT F.—Continuation Docket	41
EXHIBIT G.—Journal and Execution Docket	42
EXHIBIT H.—Parts of Pages 164 and 276 of Vol. 6, Index of State Cases	43

LIST OF DIAGRAMS

DIAGRAM	PAGE
1. What happened to each 100 state misdemeanor cases in the Municipal Court, 1919-1920	8
2. What happened to each 100 cases of violations of city ordinances in the Municipal Court, 1919-1920	8
3. What happened to each 100 felony cases beginning in the Municipal Courts, 1919	10
4. How each 100 sentenced defendants pleaded	12

PROSECUTION

CHAPTER I

THE PLACE OF PROSECUTION IN CRIMINAL JUSTICE

SOME FUNDAMENTAL ASSUMPTIONS

THIS division deals with the prosecution—that is, the work of the prosecuting attorneys in preparing, presenting, influencing, and controlling the case of and for the State or city.¹ Naturally, it touches, on the one hand, upon the work of the police, and, on the other hand, upon the work of the courts. The police and courts are dealt with in other divisions of this survey, and an attempt will be made to avoid repetition, so far as possible.

This survey began during a somewhat sensational agitation regarding a “crime wave” in Cleveland. The people of the city seemed to believe there was something wrong with the administration of criminal justice in Cleveland, and blamed the inefficiency or even corruption of individuals engaged in that administration. Despite this atmospheric condition, this study has proceeded upon the theory that the facts of the situation are ascertainable and that conclusions should follow and not precede the facts. Facts have a reforming power of their own, and there are occasions when it is useful to gather statistics which prove the obvious.

This investigation was based upon certain fundamental assumptions. We are here dealing with the enforcement of the criminal law by means of the traditional methods of procedure, involving a case in the courts with a trial of the facts and law before judges and juries, with a lawyer on each side of the case, or, at least, each side entitled to be represented by a lawyer, the prosecuting attorney being the attorney for the State or city. In other words, the assumption is made that, though the treatment of the offender may be increasingly regarded as a problem in medical science or public hygiene, and the disposition of the offender increasingly determined by means of medical, psychologic, or similar

¹ Prosecutions for violation of State laws are brought in the name of the State of Ohio; those for the violation of city penal ordinances in the name of the city of Cleveland.

examinations, still, for a long time to come, most cases will be treated as involving law enforcement and administration of justice, and the function of the prosecuting attorney will remain substantially as at present. In short, the scope of this report does not include a discussion of any question of abolishing the prosecutor: it seeks to appraise the success with which the prosecutor is performing the task assigned to him.

The American political and constitutional system will also be assumed. This study does not aim to go beyond practical suggestions for the improvement of the administration of justice which are easily available to Cleveland without any fundamental changes in either the political or social system or the treatment of crime.

THE SYSTEM IN OUTLINE

Criminal justice in Cleveland is administered mainly in the Court of Common Pleas of Cuyahoga County and the Municipal Court of Cleveland. Prosecutions before grand juries and county courts are in charge of the prosecuting attorney of Cuyahoga County; those in the Municipal Court are conducted by the prosecuting attorney of the Municipal Court. The records show that about 10 per cent. of the county cases originate in the grand jury and these involve no work of the municipal prosecutor. No record is made of matters which are presented to the grand jury but in which no indictment is found, and these matters involve no official work on the part of the municipal prosecutor. About 4 or 5 per cent. of the cases reaching the county courts, and included in the statistics contained in this report concerning county cases, arise in territory within Cuyahoga County, but outside of the city of Cleveland, and therefore beyond the jurisdiction of the Municipal Court or municipal prosecutor of the city of Cleveland. The remaining cases fall within the jurisdiction of the Municipal Court of Cleveland and are in charge of the municipal prosecutor of that city. The facts and statistics set forth in this report concerning that court and prosecutor relate to these cases.

Jurisdiction over the accused is obtained by arresting him. The arrest may precede the making of the charge and the warrant of arrest, as, for instance, in the case of an arrest made by a police officer who is present at the commission of the offense and makes the arrest upon the basis of that which he himself sees. Or the arrest may follow the affidavit setting forth the charge and the issuance of the warrant thereon. In either event the case is placed on the docket of the Municipal Court, where the case is either dropped or given a preliminary hearing or tried.

Basing the classification upon jurisdiction of the courts, the cases may be divided into three general classes:

1. Charges of violation of a municipal law or ordinance; that is, municipal offenses where the trial of the case itself and the final sentence in the case take place exclusively in the Municipal Court.

2. Cases involving violation of State statutes of a minor degree, that is, state misdemeanors, where the Municipal Court is given the jurisdiction of a minor State court.

3. Violations of State law, where the offense involved is more serious and the sentence of imprisonment in the State penitentiary or other State penal institution is allowed—that is, state felonies. In these cases the Municipal Court acts as the court of preliminary examination to determine whether sufficient basis of fact exists for any further proceeding. The case, however, is not tried in the Municipal Court, but is tried by and judgment rendered by the Common Pleas Court.

All three classes, therefore, involve a hearing of a more or less final nature by the Municipal Court. In all proceedings in this court the State or city is represented by the prosecuting attorney of the Municipal Court. This official belongs to the department of law of the city of Cleveland, being appointed by the Director of Law, and, theoretically at least, his assistants are also appointed by the Director of Law. Consequently, in all cases the work of the municipal prosecutor chronologically precedes the work of the county prosecutor, and the hearing in the Municipal Court chronologically precedes the proceeding in any other court.

PRIME IMPORTANCE OF MUNICIPAL COURT AND PROSECUTOR

In setting down the facts regarding the administration of criminal justice in Cleveland, therefore, the description of the work of the municipal prosecutor and Municipal Court naturally comes first in order. This order of precedence, however, is justified on deeper and more significant grounds than mere chronological sequence. For, though the public is not always conscious of it, the police court or criminal branch of the Municipal Court and the officials who conduct its work are the most important of all the tribunals and officials engaged in the administration of justice in any community, especially where, as in Cleveland, the municipal prosecutor has charge of the early stages of State cases. He has the function of deciding in the very beginning whether any criminal proceeding be brought at all, and in most cases, even where an arrest has been made, it is the municipal prosecutor who has the responsibility and duty of sifting out at the start the cases which justify subjecting a person to the pains and penalties of prosecution. And when we come to observe the mere volume of criminal cases in Cleve-

land and the bearing of that volume on the possibilities of efficient administration, we will realize the importance of the municipal prosecutor as a sifter of the material to go into the mill.

More than that, the office of the municipal prosecutor and the Municipal Court are the points of contacts with the administration of justice of the overwhelming majority of the inhabitants who come into any contact with courts or court officials. There the great bulk of the population will receive its impressions regarding the speed, certainty, fairness, and incorruptibility of justice as administered. For law to be effective there must not only be justice, but also the appearance of justice—that is a truism which requires no elaboration. As a deterrent of crime, with the possible exception of the police force, the Municipal Court is more important than any other of our institutions.

The work of the municipal prosecutor may not end with the Municipal Court, for if the case, being a municipal or a state misdemeanor case, is tried by the Municipal Court and results in a judgment or conviction and sentence, the defendant may carry the case up on error to the Court of Appeals. Proceedings in error of this nature involve the same sort of questions as in civil cases—that is, the appellate court simply hears arguments upon questions of law and decides the case in the light of the arguments and the record of the hearing in the Municipal Court. Some cases may be carried to the Supreme Court of Ohio. The presentation of the city's or State's side of these appellate cases is in charge of the municipal prosecutor.

Where, however, the Municipal Court acts simply as a court of preliminary examination,—binding the defendant over to the grand jury,—then from that moment the charge of the State's case falls within the jurisdiction of the county prosecutor. It becomes the province of the latter official to present the case to the grand jury, and if the grand jury finds an indictment, to try the case before the trial court and jury. Cases which do not come up from the Municipal Court but are initiated in the grand jury are in charge of the county prosecutor from the beginning. He has the opportunity, within certain limitations, at any stage previous to the verdict of the trial jury, to drop those cases which he deems insufficiently proven to justify any further proceeding. Consequently, from the binding over of the accused to the grand jury or the initiation of the case there, the observation of facts and data will relate to the grand jury and the county courts and office of the prosecuting attorney of Cuyahoga County (which official, for purpose of abbreviation, we shall henceforth call "county prosecutor"). He is an elected official, and, theoretically at least, appoints his own assistants.

CHAPTER II

CASE MORTALITY

THE STORY TOLD BY STATISTICS

NATURALLY the first questions for the survey are: What is the number of criminal prosecutions in Cleveland? What are the different stages through which they go? What are the different points at which they may be successful or lost or dropped or disappear? What are the different steps at which the capacity or incapacity, the honesty or corruption of the prosecutor, may play a part? What has actually been the result of the work of the offices of municipal and county prosecutors in Cleveland?

The answers to these questions have been sought objectively by means of a representative body of statistics. These tables of statistics will be permitted largely to tell their own story. In reading such statistics and drawing conclusions therefrom, we must necessarily formulate more or less consciously some standard or measure of efficiency and success. The acquittal of an innocent man obviously cannot be treated as a failure in the administration of criminal justice, however disappointed the prosecuting attorney may have been about losing the case. If at any stage of a case, and after thorough investigation, the prosecuting attorney becomes conscientiously convinced that there is no proof of crime, it is his duty to "nolle" the case. Such a "nolle" is not a failure in the administration of criminal justice. There may have been some inefficiency somewhere along the line which resulted in the necessity of a "nolle," and acquittal may have been due to inefficiency in preparation of the case and not to the innocence of the accused. The more highly efficient the preparatory steps and preliminary stages, the less likely will be the necessity of trying cases against innocent men or ill-prepared cases against guilty ones. Consequently, a high percentage of cases which fail at various stages is an indication of something wrong in earlier stages. Statistics of the results of cases, therefore, while perhaps not capable of exact interpretation, do furnish significant indication of the efficiency of the system.

For the purpose of answering these questions there were gathered from the records of the Municipal Court all data shown by these records for the years 1919 and 1920. Owing to the enormous number of cases (23,776 cases on the docket in 1919, and 26,579 in 1920), it was deemed impossible to tabulate all the cases for those two years. Consequently, every tenth case was taken,¹ without any other basis of selection. These years are chosen because they were the last two full calendar years preceding the survey. In both of these years the political complexion of the office of the municipal prosecutor was Republican. To have included a Democratic administration of that office would have required going back as far as 1915 and an analysis of the records of the court for at least six years, a more extensive period than was deemed necessary for the study of existing conditions. ¶

From the records of the Common Pleas Court were taken complete data as disclosed by those records regarding all criminal cases appearing in that court for the first time during the calendar year 1919. Too late for changing the tables, it was discovered that about 100 cases of 1920 had been taken also, and were included in the totals of the Common Pleas Court statistics. As the cases are not analyzed from the point of view of the date of their appearance in the court, this addition merely increases the volume of cases, and invalidates no conclusions.² Included in the material collected about each case are: the facts about it in the lower courts; its history in the Common Pleas Court and the Court of Appeals down to April 1, 1921.

In 1919 and 1920 the county prosecutor's office was Democratic. Since January, 1921, it has been Republican, with a complete change of personnel. Naturally, there is a considerable proportion of cases which began in 1920 and have run over into 1921, so that these cases have been in the successive charge of administrations of opposite politics and of entirely changed personnel. For this reason it was deemed advisable to choose 1919 as the year for analysis, that being the last full year in which it is possible to trace the full history of most of a year's cases within a single administration.

¹ The total number of cases appearing in our statistical study of the Municipal Court for 1919 and 1920 is somewhat less than one-tenth of the total cases (50,355). This is due to the fact that the system of filing makes the number of "cases" less than the number of persons: 50,355 is the total number of persons handled by the court. The clerks who copied the data from the files were instructed to take every tenth "case" by the file numbers—hence the discrepancy.

² The last of these extra cases was entered in the Common Pleas Court January 15, 1920.

THE MORTALITY TABLES

We are calling certain of the results of these studies the "Mortality Tables," showing, as they do, the mortality of the cases at their various stages. We are giving with the tables diagrams which show in a more easily comprehended manner the relative quantities of the more important types of dispositions. Table 1 gives the statistics concerning the results and dispositions of the city misdemeanor cases; Table 2 gives these statistics concerning the state misdemeanor cases—that is, State cases which are ultimately decided or final judgment therein rendered in the Municipal Court, though the case might have included appellate proceedings in an appellate court. Table 3 gives these statistics regarding state felony cases, showing the results thereof in the Municipal Court, before the grand jury, and in the Common Pleas Court, where felony cases are finally tried and where sentence is imposed.

TABLE 1.—MORTALITY TABLE OF CITY MISDEMEANOR CASES,
1919-1920

	Number of cases	Number of cases remaining	Per cent. of cases	Per cent. of cases remaining
Total	1,832	..	100.00	..
Unknown disposition	4	1,828	0.22	99.78
Discharged	232	1,596	12.66	87.12
"No papers"	27	1,569	1.47	85.65
<i>Nolle prosequi</i>	141	1,428	7.70	77.95
Dismissed for want of prosecution	..	..	..	..
Other dispositions; no sentence	8	1,420	0.44	77.51
Found guilty; total	(1,420)	..	(77.51)	..
Plead guilty	813	607	44.38	33.13
Plead not guilty	598	9	32.64	0.49
Plea unknown	9	..	0.49	..

EXECUTION, SUSPENSION, AND MITIGATION OF SENTENCES

	Number	Per cent.
Total found guilty	1,420	..
Sentence unknown	8	..
Sentence known	1,412	100.00
Sentence executed	768	54.39
Sentence wholly suspended	386	27.34
Sentence mitigated	258	18.27

WHAT BECOMES OF THE FELONY CASES

Table 3 requires some further explanation. That portion which is marked "A" is a tabulation of the disposition of felony cases in the

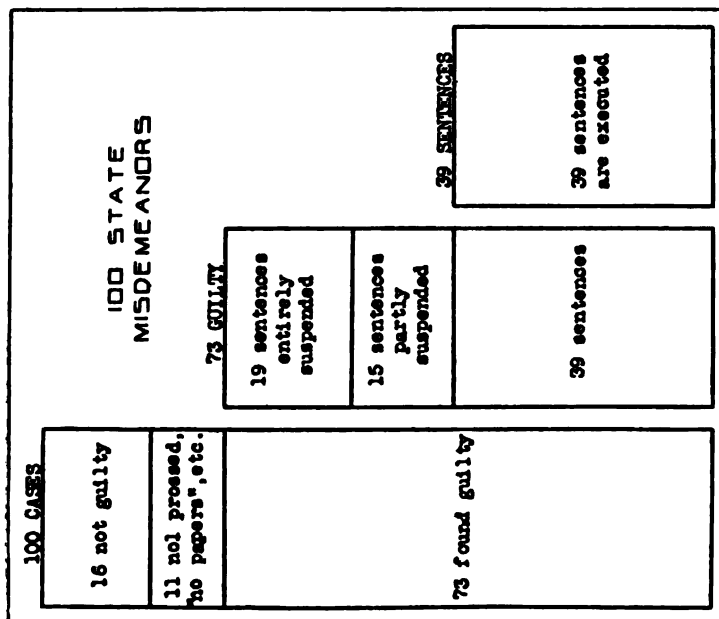


Diagram 1.—What happened to each 100 State misdemeanor cases in the Municipal Court, 1919-1920

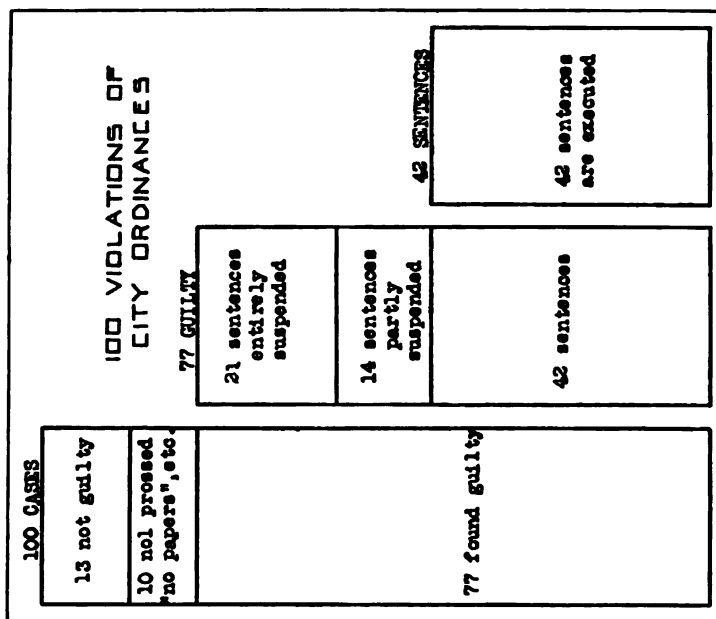


Diagram 2.—What happened to each 100 cases of violations of city ordinances in the Municipal Court, 1919-1920

TABLE 2.—MORTALITY TABLE OF STATE MISDEMEANOR CASES,
1919-1920

	Number of cases	Number of cases remaining	Per cent. of cases	Per cent. of cases remaining
Total	1,953	..	100.00	..
Unknown disposition	20	1,933	1.02	98.98
Discharged	308	1,625	15.77	83.21
"No papers"	19	1,606	0.97	82.24
<i>Nolle prosequi</i>	89	1,517	4.57	77.67
Dismissed for want of prosecution	87	1,430	4.45	73.22
Other dispositions; no sentence	8	1,422	0.41	72.81
Found guilty; total	(1,422)	..	(72.81)	..
Plead guilty	812	610	41.58	31.23
Plead not guilty	577	33	29.54	1.69
Plea unknown	33	..	1.69	..

EXECUTION, SUSPENSION, AND MITIGATION OF SENTENCES

	Number	Per cent.
Total found guilty	1,422	100.00
Sentence unknown	14	..
Sentence known	1,408	100.00
Sentence executed	743	52.77
Sentence wholly suspended	372	26.42
Sentence mitigated	293	20.81

Municipal Court, and is taken from the record book known as "Execution Docket" for the period approximately identical with the year 1919, which is the period for which the tabulations of results in the county court were made. The percentages are based on the whole number of felony cases in the Municipal Court in that period, namely, 3,927. That portion marked "B" is the analysis of results in the Common Pleas Court, as shown by an actual tracing of every case in that period. As the cases include those which originated in the grand jury and those which originated in magistrates' courts outside of Cleveland proper, the number is greater than the number of felony cases in the Municipal Court of Cleveland. Column 3 represents the percentage of each type of disposition based on all the cases in the county court, namely, 3,236. We cannot assume that the cases bound over in 1919 by the Municipal Court correspond with absolute identity with the bound-over cases which were disposed of by the county court in the same period. In view, however, of the fact that the bound-over cases constitute so predominant a proportion of the cases in the county court, it is fair to

assume that the 2,901 bound-over cases received approximately the same percentage of dispositions as were found to have been received by all cases in the county court. The percentages, calculated on the basis of this assumption, are set forth in column 5, the percentage being based on the whole number of cases originating in the Municipal Court. For

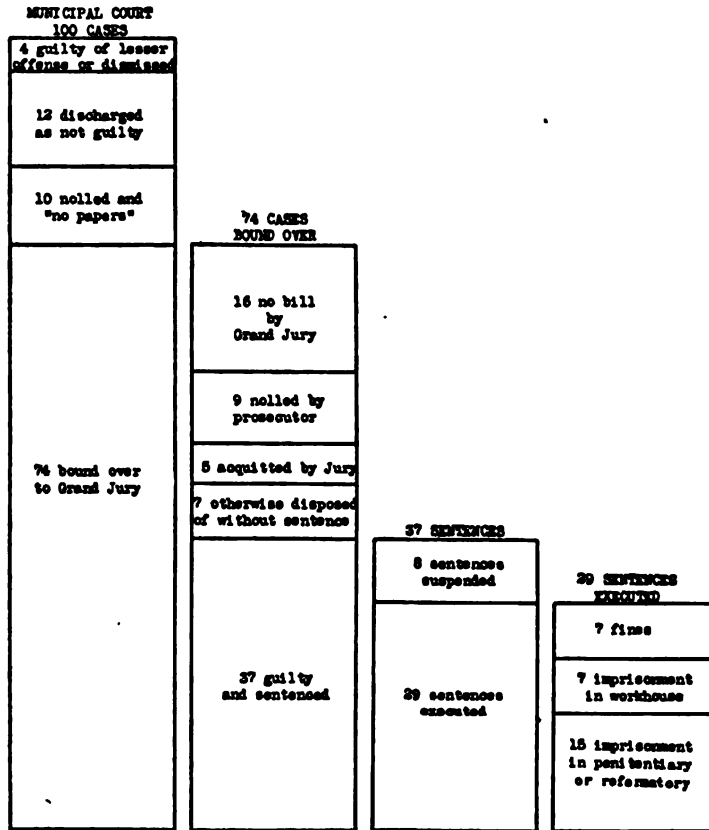


Diagram 3.—What happened to each 100 felony cases beginning in the Municipal Courts, 1919

instance, as an illustration, take the item "*nolle prosequi* in all courts." As shown in column 3, 12.33 per cent. of the cases received this disposition. As Part A shows, 73.87 per cent. of the felony cases in the Municipal Court are bound over. If 12.33 per cent. of these are later "nolle," then it follows that the percentage of all felony cases originating in the

TABLE 3.—MORTALITY TABLE OF FELONY CASES, 1919

	1	2	3	4	5	6
	Num- ber of cases	Num- ber of cases re- main- ing	Per cent. of cases Common Pleas Court base	Per cent. of cases remain- ing Common Pleas Court base	Per cent. of cases Muni- cipal Court base	Per cent. of cases remain- ing Muni- cipal Court base
A. In the Municipal Court						
Total	3,927	..	..	..	100.00	100.00
Discharged	483	3,444	..	..	12.30	87.70
"No papers"	70	3,374	..	..	1.78	85.92
<i>Nolle prosequi</i>	312	3,062	..	..	7.95	77.97
Dismissed for want of prosecution	57	3,005	..	..	1.45	76.52
Other dispositions not re- sulting in sentence	24	2,981	..	..	0.61	75.91
Charge reduced; total	(80)	..	..	..	(2.04)	..
Plead guilty; sentenced	45	2,936	..	..	1.15	74.76
Plead not guilty; sen- tenced	18	2,918	..	..	0.46	74.30
Plea unknown	17	2,901	..	..	0.43	73.87
Bound over	2,901	..	..	..	..	..
B. In the Common Pleas Court						
Total	3,236	..	100.00	..	73.87	73.87
No bill	697	2,539	21.54	78.46	15.91	57.96
<i>Nolle prosequi</i> on all counts	399	2,140	12.33	66.13	9.11	48.85
<i>Nolle prosequi</i> after new trial is ordered	13	2,127	0.40	65.73	0.30	48.55
<i>Nolle prosequi</i> after jury disagreed	6	2,121	0.19	65.54	0.14	48.41
Acquitted first trial	223	1,898	6.89	58.65	5.09	43.32
Acquitted second trial	5	1,893	0.15	58.50	0.11	43.21
<i>Nolle prosequi</i> , convicted or in prison on other charges	84	1,809	2.60	55.90	1.92	41.29
Discharged on demurrer	5	1,804	0.15	55.75	0.11	41.18
Discharged on motion to discharge	10	1,794	0.31	55.44	0.23	40.95
Discharged for want of prosecution	16	1,778	0.49	54.95	0.36	40.59
Bail forfeited or never in custody	90	1,688	2.78	52.17	2.05	38.54
Miscellaneous dispositions resulting in no sentence	92	1,596	2.85	49.32	2.10	36.44
Convicted of misdemeanor	74	1,522	2.29	47.03	1.69	34.75
Original plea guilty of les- ser offense	22	1,500	0.68	46.35	0.50	34.25
Changed plea not guilty to plea of guilty lesser offense	193	1,307	5.96	40.39	4.40	29.85
Original plea guilty of offense charged	433	874	13.38	27.01	9.88	19.97
Changed plea not guilty to guilty of offense charged	550	324	17.00	10.01	12.56	7.41
Convicted of felony	293	31	9.05	0.96	6.69	0.72
Miscellaneous combina- tions of pleas; sentenced	17	14	0.53	0.43	0.39	0.33
Other dispositions; sen- tenced	14	..	0.43	..	0.35	..
Sentence executed, 78.11 per cent.			Sentence suspended, 21.89 per cent.			

Municipal Court (3,927) which are ultimately "nolled" by the county prosecutor after they are in his charge is 73.87 per cent. of 12.33 per cent., namely, 9.11 per cent.—which is the figure found in column 5. The item "Miscellaneous dispositions resulting in no sentence" includes disposition such as abatement by death of defendant, commitment of

In the Municipal Court	In the Common Pleas Court
MISDEMEANORS	FELONIES
58 plead guilty	14 plead guilty of lesser offense
	27 made original plea guilty of offense charged
	35 changed plea from not guilty to guilty
42 plead not guilty	24 plead not guilty and were convicted

Diagram 4.—How each 100 sentenced defendants pleaded

defendant to a non-penal institution, dismissal of case on demurrer, etc., in which the case was neither tried nor dropped by the prosecutor.

Supplementing these tables and diagrams is Diagram 4. It shows the number of each kind of plea made by those sentenced. All the misdemeanor cases are lumped in one column, because the difference between city cases and State cases in respect to pleas is very slight.

CHAPTER III

THE MUNICIPAL COURT IN OPERATION

THE Municipal Court forms the stage upon which the municipal prosecutor plays his part. He can play this part well only if the settings permit. The orderliness and dignity or the disorderliness and slovenliness with which the court itself proceeds necessarily have an effect on the prosecutor's work, and his work, in turn, reacts upon the court.

On March 23, 1921, the maker of this report watched one of the rooms of the Municipal Court in operation. There was no malice aforethought in the choice of room or day. Immediately after the visit the following memorandum of impressions received was made:

"I spent the whole morning in this court-room, arriving promptly at 9.¹ There was as yet no evidence that any court would be held that day, except the docket book lying open on the table and a few stragglers in the spectators' benches. It was fully 9.30 before the judge appeared and fully 9.45 before he got under way. By that time all the seats and aisles were filled with people—policemen, defendants, lawyers, spectators. The atmosphere of the room was extremely sordid. It was a room about 40 feet square, walls painted in an ugly yellow, made still more ugly by accumulated soot, and no decorations of any kind whatever. Though I sat within 15 feet of the bench and witness-chair and strained my ears, I could seldom catch a word of what was going on. From the beginning to end the whole proceeding seemed to me one calculated to impress the spectator with at least the suspicion that the main influence at work was not

¹ The rules of the Municipal Court of Cleveland on the subject of sessions of court provide:

"The sessions in the civil branch of this court shall be from 8 o'clock A. M. until 11 o'clock A. M., and from 12 o'clock M. until 3 o'clock P. M., central standard time, on each week-day, except Saturday, when the session shall be from 8 o'clock A. M. until 11 o'clock A. M., central standard time; and the sessions in the criminal branch of this court shall be from 7.30 o'clock A. M. until 11 o'clock A. M., and from 12.30 o'clock P. M. until 3 o'clock P. M., central standard time, on each week-day, except Saturday, when the session shall be from 7.30 o'clock A. M. until 11 o'clock A. M., central standard time."

the evidence or judicial procedure as we know it, but either strange influences not audible in the court-room or things that were whispered into the ear of the judge.

"The cases are called by number, with only occasionally the name of a defendant also added. The witnesses are sworn by a form of oath which identifies every case under the expression 'pending case,' without reference to either the number or the names of the defendants. The prosecutor had no papers whatever. He lolled against the bench. For each case he was handed a copy of the affidavit and that is all he ever looked at. He took a glance at the paper to ascertain the nature of the case. He then mumbled something to the judge, whereupon the case was often announced as 'continued' or 'no-papered' or a light fine or sentence given. Other times he called the police officer or other chief prosecuting witness and mumbled some question which started the witness off, and generally that was the full extent of the participation of the prosecutor.

"In a few cases the attorney for the defense took part in the interrogation. Generally, however, he seemed to simply wander and stand around, mysteriously going in and out, sometimes approaching the bench, sometimes going to the benches and talking to somebody, and every once in a while somebody would go up and whisper something into the judge's ear. Seldom were all the witnesses sworn in any case actually called to the stand.

"While this mumbling and whispering were going on in the immediate vicinity of the bench, the main aisle leading in from the door into the court-room and to the bench was the scene of constant goings and comings. It was never quiet a second. Walking around, standing around in groups, moving around hither and thither, went on constantly. Not only was it impossible to hear what was going on in the trial, but it was generally impossible to see what was going on. One or two well-tried—that is, by the defense—and well-fought—that is, by the defense—liquor cases were the only exceptions to the above picture."

In order that we might get the picture as seen by a more highly trained observer, an experienced newspaper reporter, but one whose work had not previously included a police court, was asked to observe these criminal rooms of the Municipal Court in action. He reported:

"On the morning and afternoon of April 8 and on the morning of April 9, I visited the court of Judge A in Room 2 of the Police Headquarters Building, and the court of Judge B in Room 1 of the same building, for the purpose of observing as closely as possible the details of the handling of cases.

"Judge A's court was by far the more objectionable. The environment is anything but conducive to respect for the law. The room itself is inexcusably dirty, dark, and noisy. From the four doors there is a constant stream of visitors, witnesses, court attendants, probation officers, and attorneys filing around the edges of the room.

"The confusion is enhanced by the way in which cases are conducted. The witness-stand is but a few feet from the seat of the judge, so that whatever

questioning is going on is inaudible 10 feet away. Reporters who are 'covering' the court are forced to lean over the back of the witness-chair in order to hear. It is easy to see why newspapers often get court reports mixed up.

"At many times during the trying of cases there were as many as 40 persons gathered closely around the witness-stand or within 10 feet of the bench. This gathering was not confined to those persons taking part in the case under consideration, but consisted largely of attorneys waiting for their own cases to be called. There was no method of distinguishing prosecutors from witnesses or attorneys from prisoners.

"A large part of the day was taken up by conversations which went on in undertones between the judge and attorneys or prosecutors. These conversations had largely to do with pleas for continuance or excuses for the non-appearance of clients. If these conversations constitute part of the dispensing of justice, no one except the parties conversing could tell.

"The only case in which I was able to get any detail was that of a man named Fred Meyer, who, it seems, should have appeared in court to face a charge of violating the traffic ordinance. Apparently he had been summoned for the day before (Friday) and had not appeared. After questioning the attorney who represented Mr. Meyer, Judge A mentioned something about contempt. The attorney left the bench but returned a few minutes later and pleaded for a closing of the case, saying he would take the blame for the non-appearance of his client. The judge smiled and pronounced a sentence; I believe it was \$10 and costs.

"Non-appearances seemed to be in fashion at this court. In at least a dozen cases neither the accused nor the policemen nor detectives were present at first. The cases were called again and again, some of them being heard with part of the witnesses present, others apparently going by default. I did not hear the judge order a single person brought in or mention 'contempt' once. He may have done so, but if he did, it was in a whisper.

"Frequently Judge A was conversing with the clerk or some other person and was not in a position to hear the evidence being brought out. At all times he was conducting cases in a spirit of complete boredom.

"Prosecution of cases was conspicuous chiefly by its absence. Nine-tenths of the questioning of witnesses was done by the attorneys for the defense. The prosecutor was present during part of some cases and absent during all of some. In not one case which I observed was he present at a complete trial. His chief function seemed to be to assist the bailiff in rounding up witnesses and in informing the judge of facts regarding the cases which the blotter did not show. This lack of prosecution was so obvious it was almost laughable.

"Swearing of witnesses was done in most cases, though not in all. I saw no attempt to manhandle or intimidate the foreigners who thronged the court. The treatment accorded them was courteous on the whole. In fact, a spirit of levity was reached in some of the cases. There was a total lack of dignity in all.

"Judge B's court was much more dignified, despite his habit of repeating

the question—'how much money has the prisoner got?'—before pronouncing sentence. He asked this question mostly in cases where men had been given time in which to pay large fines and had been brought back for failure to make good. On being informed (correctly or otherwise) of the status of the prisoner's pocket-book, the judge then reduced the fine in practically every case.

"After one such case, in which the fine had been reduced from \$300 to \$150, the judge jokingly asked the attorney who had represented the prisoner how much he got out of the man. 'One hundred dollars,' said the attorney, and they both laughed.

"On the whole, Judge B's court was somewhat impressive. The court was more open as to conversation, and the judge attempted to impress on the prisoners the seriousness of their position. Judge A took no pains to say anything to the prisoners.

"There was less crowding around the bench and less conversation than in A's court. In both there was much delay in getting cases started because of missing witnesses."

A description was also requested from a capable Cleveland attorney sufficiently familiar with the Municipal Court to be able to interpret many things which might puzzle the lay spectator. He reported:

"To anyone who has seen the criminal branch of the Municipal Court, commonly called the police court, in operation, it is obvious that an observer can secure only the most superficial information unless he were to spend at least ten days continuously in that court. Confusion reigns supreme, and the tramping of witnesses and spectators back and forth across the court-room, together with the frequent rapping of the bailiff for order, are interruptions which are all too frequent, especially in view of the fact that the proceedings are usually conducted in very low tones. The usual number of spectators who apparently have no business in police court but who are always there and who are reputed to represent various lawyers appearing there, are to be found in both court-rooms every day.

"On Tuesday, April 26, at the morning sessions, the following incidents were noticeable: In Room 2, Judge A presiding, the court opened about 9.05 and immediately proceeded to hear cases, principally of traffic violations, without the presence of a prosecutor in the room. Most of these cases were disposed of very quickly by hearing the brief statement of the traffic officer and the defendant himself—fines usually running \$5.00 and costs. About 9.45 Prosecutor Novario entered and, after advising the court that two cases were 'nolled,' proceeded to conduct the prosecution. Throughout the proceedings there was considerable banter exchanged between the court and the prosecutor, usually with reference to liquor law violations, with such remarks as, 'What were you drinking, coal oil or gasoline?' 'Can you tell us where you got that stuff?' 'Must have been drinking a high explosive,' and other remarks of a similar nature. First question addressed to witnesses for either prosecution or defense was usually, 'What

happened in this here case?' No trouble was taken to ask any of the witnesses their names or whether or not they had seen the incident. In other cases, involving traffic violations, the first question asked by the prosecutor was, 'What do you want to do, kill everybody in Cleveland?' and in other cases it was, 'What do you mean driving a million miles an hour on the street?' It was observed in this court-room that several witnesses testified without being sworn and to others the oath was administered in such a manner that they probably had not the slightest idea what proceeding was taking place.

"In Court-room No. 1, Judge B presiding, Prosecutor Russick was observed not to have asked any of the witnesses any questions until the latter part of the morning, when Case No. 37, Harry Wright, cited for contempt of court, came on and then there was an argument between Prosecutor Russick and Attorney Day on a motion in this case. At no other time during the proceeding did Prosecutor Russick question any of the witnesses, with the single exception of Case No. 59, which was heard about 11.15 A. M., and in this case the prosecutor questioned the first witness, who was an incompetent witness because of the fact that he had not witnessed the act itself. The examination of the other witnesses in this case was conducted by the court, and defendant eventually fined \$50 and costs. Prosecutor Russick then sat down at the trial table and proceeded to read a book, when Case No. 57 was called. This was a case in which Joseph Sklarski was arrested at the instance of his landlady, with whom he had boarded for one year, on the charge of assault. Neither the prosecuting witness nor the defendant spoke English, and the defendant was asked by an interpreter if he plead guilty or not guilty, without having the charge translated for his benefit. The interpreter then addressed the court as follows: 'Judge, he says that he pleads guilty but he wants a continuance to get a lawyer.' The court then made some inaudible remark, and in a louder voice told the interpreter to put the prosecuting witness on the stand. She then gave her testimony and the defendant was called to the stand. He testified, and without further testimony the court sentenced him to six months and \$200 fine and costs, and he was hurried out of the court-room in spite of the fact that he protested that he wanted a chance to get an attorney. Throughout the proceeding in this case the prosecutor sat at the trial table reading."

The next observer was an able Cleveland lawyer whose experience enabled him to know "who's who" in the police court, and he was asked to observe specially the part played in the drama by the habitués of the court. He reported (except in the case of prosecutors, fictitious names are used):

"To report everything that goes on in the criminal branch of the Municipal Court of Cleveland, generally referred to as the police court, is an impossibility for one man. To do so it would require the ability to see in all directions at the same time and to hear what was said in every part of the room, and in addition insight into the mental workings of any number of individuals who are present

and who operate in such a manner as not to be discerned either by the sense of sight or hearing. This last type has in most instances got in its work outside of court hours and is present merely for the purpose of seeing that promises are fulfilled or to convince those for whom they are working that they have had some part in the accomplishment or services rendered.

"The following account is a rough sketch of observations made at the session of police court on Friday morning, April 22, 1921:

"I arrived at the Central Police Station about 8.45 and found the persons who are in attendance at the court beginning to assemble; a number were gathered around the bulletin board containing the names of about 150 defendants whose cases were on for hearing on that day. Some of the attorneys who had considerable practice in police court were busy interviewing witnesses and conferring with prosecutors and clerks. I noticed particularly Fred Smith¹ conferring with Frank Brown, the last-named person not being an attorney, and to my knowledge has for six years been a runner for Thomas Jones, an attorney. Frank Brown still seemed to be at his regular business of interviewing witnesses and soliciting business for Thomas Jones. Also I saw present in the hallway leading from the clerk's office to the court-rooms Louis Napier, who is not an attorney and who is a brother of one of the prosecutors. I did not see him in conference with any individual during the whole morning, but during the first hour and a half of the session of the court he passed through the back of court-room No. 1 on his way to court-room No. 2 no less than half-dozen times, and I am advised by one who is in attendance at the court most every day that he is present every day.

"Frank Brown was also busy about the court-room practically all morning, either in Room 1 or Room 2, and conferred with Thomas Jones and Fred Smith on numerous occasions, and such conferences were apparently acquiesced in and unnoticed by the judges, prosecutors, and clerks. Frank Brown was also seen a number of times in the hallway leading to Court-room No. 1, and also in the hallway of Rooms 1 and 2 in conference with persons, but I was unable to hear what was said as the conversation was carried on in a very low tone.

"I have gone into details somewhat at length with regard to these two examples of police court hangers-on, and have referred to them merely as an example of a number of such persons who are present morning after morning in police court, but who are not attorneys and who apparently have no business there and who are not engaged in any regular occupation, but who somehow or other make their living out of such attendance.

"By 9 o'clock the seats in Room 1 were about two-thirds full of witnesses and defendants and those awaiting hearing, and upon the appearance of Judge B, the bailiff thumped three times on the desk with his gavel and called the court to order. This was followed by the clanging of the door of the bull pen where

¹ A lawyer practising habitually in this court and partner of Thomas Jones, a more prominent habitual practitioner in this court.

the prisoners are kept. The court officer then led out into the court-room three defendants who were designated by numbers only, such as Cases 71, 72, and 73. The clerk then read the charge in a monotone voice, and asked the question, 'How do you plead?' There was a nodding of heads by the defendants, all of whom pleaded guilty apparently. The judge then motioned to one of the defendants to take the stand, he asked him a few questions, and then said a few words to the other two parties. Finally he wrote something on the docket and the three men were led back into the bull pen. I should have stated that by this time William Gardner and Mr. Chester¹ had seated themselves at the trial table, and Smith, Jones, and others had assembled and stood around the witness-chair listening to the testimony, but apparently having no other interest in the cases. Prosecutor Russick stood by the witness-chair up until intermission at 10.30, but only in one of the hearings took any part in the prosecution, the judge making all inquiry of witnesses and handling the cases without the assistance or interference of the prosecutor. I sat on the front bench in the court-room, where witnesses and spectators are seated, about 10 to 20 feet away from where the trial was going on, but was unable to hear anything that was said. I would have been unable to comprehend what was going on except for the fact that my experience there has enabled me to know by seeing just what is being done.

"Tramping was so continuous and so loud that persons seated in Court-room No. 1, not being able to hear any of the proceedings, passed the time away talking with one another. This added to the general hubbub. Policemen waiting to testify as witnesses also felt at liberty to keep up a continuous conversation with whoever was sitting next to them, usually another policeman. During the session of the court from 9 to 10.30 the court, bailiffs, and prosecutors went ahead with their work regardless of the noise that was going on around them. At no time was anything said to bring order or to impress the assembled crowd as to the dignity of the whole proceeding.

"To give an example, the conduct of a specific case: Two negro girls were called before the clerk and charged with street soliciting. Jones was representing both of these women, and the two defendants, together with Prosecutor Russick and Attorney Jones, immediately gathered in front of the desk of the judge. A police officer took the stand and immediately about 18 persons gathered around the witness-stand and within a few feet of the witness and the defendants and leaned forward to catch what the police officer was saying. About half of these were attorneys. The prosecutor did not assist in the prosecution, except to ask the police officer to get off the stand. The judge then asked another police officer as to his testimony, and upon being advised that it was exactly like the officer who had testified, proceeded no further, and the State's side of the case was considered as complete. Jones apparently was satisfied with the State's side of this case. The judge then leaning over his desk spoke to the larger of the two defendants without having her take the witness-chair and inquired what

¹ Two colored lawyers and politicians.

she was doing down on Hamilton Avenue, completed the cross-examination himself, and also conducted the cross-examination of the other defendant, and the prosecutor apparently not resenting this assumption of his duties by the court, in fact, appearing to feel somewhat relieved that the judge saved him his additional labor. A probation officer then volunteered some information to the court regarding both of these defendants, and from a card indicated that one of the women was on parole and had violated her parole. The court gave the smaller of the women a sentence of thirty days, at which Jones protested very vigorously, and leaning over the desk assumed a confidential air with the judge and attempted to pour into his ear a story that would procure a lighter sentence for his client. The smaller of the two defendants was committed to jail and the other one given a suspended sentence.

"I omitted to mention the fact that City Councilmen Green, Walter, and Temple were present in court a great part of the morning. Councilman Green was seated at the table in Room No. 1 from about 9.30 to 10, and was seen repeatedly 'kidding' a police officer who had a package under his arm, which officer I later learned was the prosecuting witness in a case against clients of Councilman Green, who were awaiting trial on the charge of larceny. He appeared to be making light of the charge, and repeatedly snatched at the bundle under the officer's arm, which seemed to contain a piece of men's wearing apparel, and at one time snatched the bundle from the officer's arm and threw it under the table, much to the amusement of the councilman's clients, who were sitting on the bench awaiting the calling of their case, which was the next one. This intimacy of the councilman with the policeman was typical of his conduct toward all of the officers of the court. When the case was called a continuance was granted, and the prisoners who were out on bail walked out of the court-room apparently satisfied with the services Councilman Green, who is also an attorney, had rendered them. The police officer who was ready to go ahead with the hearing acquiesced in the continuance.

"On Tuesday, April 26, I again visited the police court and found practically all of the persons mentioned in my previous report present in one or other of the court-rooms.

"There were three prosecutors in Court-room No. 2, namely, Prosecutors Novario, Russick, and Kreisberg, each of them appearing to be interested in the disposition of particular cases. I heard Prosecutor Novario ask for a 'nolle' in two cases—the nature of the offenses in such cases I was not able to find out.

"Prosecutors Russick and Kreisberg remained in the room perhaps ten or fifteen minutes, and then Prosecutor Russick returned to Room No. 1, where he was handling cases.

"This illustrates the practice of some attorneys in going to a prosecutor and requesting a 'nolle,' even though he is not the prosecutor handling cases in the court-room in which the 'nolle' is requested, and frequently 'nolles' are granted in a court-room without the knowledge of the prosecutor in charge of cases in that room.

"A police sergeant was on duty this day, the same as on the Friday previous, as reported, preventing persons from loitering in the hallway leading from the court-room to the prosecutor's office. On two occasions he strode through this hallway crying in a loud voice to the persons there to move on; there were probably about two dozen standing there, and about half of them obeyed his orders. I have seen him perform this duty on about half a dozen different occasions and have noted that his orders were obeyed implicitly by newcomers, who dispersed at once, but were ignored by the regular attendants of the police court, the officer apparently being blind to their presence."

Another attorney was sent to observe the court on these same two days. He was not familiar with the "regulars" there, but was instructed to keep his eyes and ears on the trials, take notes and report all details observed by him. His report for April 22, 1921, follows:

"I reached the Municipal Court at 8.15 A. M. and found Room 2 entirely empty. In Room 1 there were five colored people waiting for the court to open, including three women, one man, and one child. There were six white women, all of whom looked to be of foreign extraction, and apparently all were engaged upon the same errand.

"There was already considerable activity in the clerk's office, and a group of several men and women were examining the docket on the bulletin board in the hall. At this time there were 125 cases on the docket for the day.

"Court was called to order at approximately 9 A. M. in both rooms: Judge A and Prosecutor Novario in Room 2, Judge B and Prosecutor Russick in Room 1.

"I went to Room 2, sitting about 10 feet from the witness-stand. During most of the time it was practically impossible to hear what was said.

"The following cases were called either by number or by name, and sometimes in both ways, but in many cases it was impossible for me to tell whether or not the defendant appeared or whether the court went on to some other case or what disposition was made of the particular case:

Case

No.

29, 42

49 Pleaded guilty.

44, 45

55 John Molnar.

57 Martin Gross and Sam Cunsolo, colored. I could not tell what disposition was made of this case, but the two men were locked up again.

51 Pleaded not guilty.

50 Arthur Phillips, pleaded guilty.

46 Joseph Tobias, pleaded guilty.

36 Pleaded guilty.

32 William Day, pleaded guilty. Five days and costs.

40 Anthony Paris, pleaded guilty.

49 Oscar Wagner.

Case
No.

- 8 A stenographer was taking a record in this case, and in order to hear was obliged to sit on the table and write on the railing surrounding the witness-stand.
- 48 Pleaded guilty. Prosecutor Rosenberg handled this case, and perhaps the following one, and then retired in favor of John Novario. It was 9.40.
- 47 John Vitski.
John Berry.
- 38 M. O. Gordon.
Joseph Rosen.
- 33 and 34 These were apparently two felony charges against the same defendant, and his lawyer was not there. The judge told the defendant to get a move on and get a lawyer, and the case was apparently continued.
- 56 Martin Gross.
Charles Wo.
Max Herman.
J. W. Lolabias and John Burra.
- 24 The defendant was charged with being a married man and representing himself as unmarried. The prosecuting witness stated that on the basis of his representation she had broken her engagement with some other man and that he had asked her to marry him. Two other women testified in support of the prosecuting witness.
- 18 Harry Burney. Councilman Green represented the defendant. A few minutes before this case was called Novario wandered a little way from the witness-stand, although a case was in progress, and held a whispered conversation with Finkel. When the case was called, Novario made some remark to the judge which I heard imperfectly, but I understood him to say, 'I understand that the prosecuting witness does not want to go on with this case.'
The case was dismissed for want of prosecution, I think.
- 23 Sam Ettinger. The charge was manslaughter in two cases arising out of an automobile accident at the corner of East 40th Street and Superior Avenue, N. E. There was a number of witnesses, and Hart sat down at the trial table, as did also Novario, and it looked as though there might be something to suggest a trial. As soon as the witness began to testify, however, the attorney and prosecuting witness crowded around the witness-stand in the customary fashion. Attorney for defendant asked for a separation of the witnesses for the prosecution, which was allowed. The two principal prosecuting witnesses were a young man and his sister who were driving along Superior Avenue at the time of the accident. They both stated that the man at the filling station at the corner of East 40th Street and Superior Avenue had also seen the accident, but he was not there as a witness. I heard Prosecutor Novario ask the police officer whether or not the man from the filling station was there and he said not. I think that the defendant was not bound over. Prosecutor Novario paid very little attention to the prosecution or the witnesses. He stood around the witness-stand a great deal of the time and participated a little, but from time to time would wander off to talk to his brother or to Councilman Green or some other bystander, although the case was in progress and a witness testifying.

"At 10.30 I went into Room 1. The numbers of the cases called in Room 2

given above are, of course, numbers from the cases on the docket in Room 2, and not the numbers of the cases as they appear in the prosecutor's docket in Room 1 or upon the bulletin board in the hall. The following cases were called in Room 1 subsequent to 10.30:

*Case
No.*

This was a case against two defendants, apparently for stealing a dress or receiving it as stolen property. Councilman Green represented the defendants and they were apparently dismissed.

The next case was ruled upon by the judge without any audible conversation. The defendant, so far as I could see, did not come on the stand, but his attorney and the prosecutor whispered to the judge and the judge simply waved his hand to the defendant, who was sitting in one of the benches, and the defendant and his attorney walked out. There was no way to tell what the name of the defendant, the number of the case, or the charge was.

93 and 95 Plead guilty.

77 Joe Bilski. It was a case of assault and battery, a man having struck his wife and she had a beautiful black eye. The defendant was represented by some attorney whom I do not know. The defense was that the defendant was trying to compel his oldest son to go to work, and in the course of the discussion picked up a shoe and threw it at him and the shoe, very unfortunately, struck the wife in the eye. The testimony was that the defendant and his wife had been married over twenty years and that they had three children, the oldest twenty-three and the youngest four. During the trial of the case Prosecutor Russick was walking around and talking to different people and paying no particular attention to the case. The evidence also showed that the defendant had not been working for the last ten months. The court sentenced the defendant to pay the costs and to serve four months in the workhouse.

49 and 50 These were two cases against the same doctor for failure to record a birth and failure to report diseased eyes. Judge B apparently expressed the opinion that he could fine the defendant \$50 and costs, and upon defendant's attorney protesting said, 'I will split the difference and give him \$25 and costs.'

1 Michael Mees.

25 James Slater.

31 Sam Schultz. I am not sure whether this case was continued to April 29 or whether it was this case which was tried and the court held that it was simply a civil matter and it was up to the defendant to sue and get the money. The facts in the case which the court decided were that the prosecuting witness had given the defendant certain goods, apparently dresses to sell, and the defendant had sold them on time. The defendant claimed that he had asked the approval of his employer before selling them on time and had tendered whatever he had received to his employer. The employer, the prosecuting witness, testified that he had not agreed to allow payment by installments and that the defendant had not tendered any payments to him. The court dismissed the case and held that it was simply a matter to be settled in a civil action.

32 Henry Neale. Passed to April 29.

This case involved a dispute as to the ownership of a dog. Each of the parties

*Case
No.*

had several witnesses and the court spent considerable time in hearing the case, and finally held it was merely a civil matter and must be settled in the civil courts.

39 and 40

52 This was a prosecution under the health ordinance for having a dirty bakery. The case had been continued from some time in February. The defendant was fined \$2 and costs.

78 Prosecution under the health ordinance for keeping a large pool of standing water in an empty lot. The court continued the case until May 6, and told the officer that he would have to have some positive proof that the pool of standing water jeopardized the health of the neighborhood before he would convict the defendant. The defendant had been warned several times to have the pool removed.

121 and 122 Case of assault and battery and contempt. At 11.30 the court in Room 1 took a recess.

24 Hoffmeyer. Case of assault and battery of a lodger upon his landlady. The story of the prosecuting witness was that the defendant had hit her and knocked her all the way downstairs. It was the defendant's contention that the landlady first struck the defendant, and that she was standing on a very narrow landing at the top of the stairs and in her excitement stepped off backward and fell downstairs. Attorney for the defendant tried to prove these facts, including the physical surroundings, size of the landing, and so forth, but Judge B said: 'That hasn't anything to do with the case—I was not even listening.'

Prosecutor Russick sat back at the table and merely watched the case as it was being tried. The court in Room 1 adjourned at 11.49 until 1.30.

"I went immediately into Room 2. Kreisberg was prosecuting and Russick had come into the room and was hanging around. The case was a felony charge against some one, and the prosecuting witness was a Chinaman named Shang Hai. At the close of the State's case the defendant started to prove an alibi, and Judge A said: 'If you are going to prove an alibi I won't hear it.' The defendant was bound over.

*Case
No.*

12 Max Golden. Assault and battery. Defendant was fined \$10 and costs.

9 Anton Wrabliski. Fined \$100 and costs. I did not hear the court say anything about suspending any of the sentence, but as the defendant was put back into the lock-up the officer yelled after him, 'You have to pay the costs.'

14 Walter Brown. Defendant was chauffeur for Mr. Lyon (?) and Mr. Lyon was present in court, standing in front of the judge. As the case was being tried the clerk of the court walked in, shook hands with Mr. Lyon, joked with him a little about the case, and walked out, stopping a minute to tell me what a fine fellow Mr. Lyon is. The defendant was fined \$10 and costs. The proceeding was apparently the first skirmish leading up to a civil case growing out of the injury to two automobiles.

60 Richard Weeden.

"The following cases were called at the end of the session in Room 2, but the defendants did not appear:

*Case
No.*

Louis Oblitaki, et al.

5 Louis Sapas.

6 Paul Borsick.

Morris Collin. Officer remarked that defendant owed \$15 and costs. Capias issued.

37 Joseph Rosen. Capias issued.

"Court adjourned in Room 2 for the day at 12.10. I returned to Room 1 shortly after 1.30 and found an assault and battery case in progress. There was no prosecutor present. The court, after listening to testimony about half an hour, dismissed the case and said it was a purely civil matter. As the defendant and prosecuting witnesses went out I noticed that they were the same six women who were waiting for the court to open when I arrived at 8.15 in the morning. The court adjourned at 2.15 for the day. One of the court officers, in checking up the entries for the day, inquired of Attorney X to what date the Solomon case had been passed. X said until June 8. The officer seemed to be a little doubtful of this, but concluded to take X's word for it and made the entry."

The report for the sessions of April 26 is quite similar. It contains the following notes concerning a prosecutor:

"Prosecutor Russick arrived in the room at 9.15 but, so far as I could see, during the entire morning did not participate in a single case to the extent of asking one question. A great deal of time he was talking to other people or sitting back at the table when the cases were going on. Most of the time, however, he was lolling upon the witness-stand and listening to what the witnesses had to say and the court's examination of the witnesses."

A fundamental principle of American justice is that it should be publicly administered. According to this theory, the accused is entitled to that impartiality and fairness of treatment which is presumed to be promoted by the fact that the judge and prosecutor perform their functions with the eyes and the ears of the public upon them. The above-described conditions in the Municipal Court fail to fulfill this fundamental requirement. The doors are open, but Argus himself could not see what is going on; and were the man who could hear the blade of grass growing on the mountainside to drop into the court-room, his exceptional aural capacity would only intensify for him the general din which suffocates the gentle mumblings and whisperings of the group on and around the bench.

These pictures show how the danger that the individual who comes into court in one relationship or another would feel that results are

dependent upon favor or strange influences rather than upon the dictates of law and justice.

LARGE NUMBER OF CASES; UNCLASSIFIED DOCKETS; EXCESSIVE SPEED

It is interesting at this place to report what actually did occur in these two rooms of the court on the morning of April 22. The following is a list of the cases called as shown on the docket, with the nature of the charge and the disposition of the case:

APRIL 22.—COURT-ROOM No. 1

<i>No.¹</i>	<i>Charge</i>	<i>Disposition</i>
1	Liquor law	Continued June 1.
2	Liquor law	Original sentence.
7	Liquor law	\$100 and costs, "motion in mitigation" April 29.
12	Liquor law	Original sentence.
13	Liquor law	Continued April 29.
14	Liquor law	Continued June 8.
19	Assault and battery	Discharged.
20	Assault and battery	Discharged.
23	Assault and battery	Discharged for want of prosecution.
24	Assault and battery	Costs.
25	Defrauding innkeeper	Capias.
31	Conversion	Discharged.
34	Suspicious person	Costs and 30 days, suspended.
35	Suspicious person	Costs and 30 days.
36	Suspicious person	Bond forfeited capias.
37	Suspicious person	Continued April 23.
38	Suspicious person	Continued April 23.
39	Grand larceny	Continued May 11.
40	Grand larceny	Continued May 11.
42	Conversion	\$500 and costs and 3 months.
46	Health ordinance	Discharged.
47	Destroying property	Discharged.
48	Petit larceny	Discharged.
49	Fail to report diseased eyes	Discharged.
50	Fail to report birth	\$25 and costs.
51	Assault and battery	Discharged for want of prosecution.
52	Health ordinance	\$2 and costs.
53	Health ordinance	Continued April 29.
54	Suspicious person	Discharged.
55	Suspicious person	Discharged.
56	Pocketpicking	Error.

¹ As all the cases are first put on the docket in Room 1 and the Room 2 cases then transferred, the remaining Room 1 cases will not have consecutive numbers.

<i>No.</i>	<i>Charge</i>	<i>Disposition</i>
62	Petit larceny	\$50 and costs and 30 days.
71	Intoxication	Continued April 29.
72	Intoxication	Costs.
73	Intoxication	Continued April 29.
74	Intoxication	Continued April 29.
75	Intoxication	Costs.
76	Assault and battery	Discharged.
77	Assault and battery	Costs and 4 months.
78	Health ordinance	Continued May 6.
79	Petit larceny	Costs and 30 days.
80	Common beggar	Costs and 15 days.
81	Common beggar	Costs and 15 days.
82	Common beggar	Discharged.
83	Petit larceny	Continued April 29.
84	Disturbance	Costs.
85	Disturbance	Costs.
86	Disturbance	Costs.
87	Disturbance	\$25 and costs.
88	Vagrancy	Discharged.
89	Vagrancy	Discharged.
90	Vagrancy	Costs and 15 days.
91	Suspicious person	\$10 and costs.
92	Suspicious person	Continued April 29.
93	Suspicious person	Costs and 30 days, suspended.
94	Suspicious person	Continued April 29.
95	Suspicious person	Costs and 30 days, suspended.
96	Suspicious person	Continued April 29.
119	Liquor law	Continued April 30.
120	Contempt	Discharged.
121	Contempt	Discharged.
122	Assault and battery	Discharged.
126	Liquor law	Discharged.
127	Liquor law	\$100 and costs, "motion in mitigation" April 30.
128	Liquor law	Continued April 29.
129	Liquor law	Motion granted, \$500 of fine suspended.
130	Liquor law	Continued April 29.
131	Liquor law	April 28 continuance.
132	Carrying concealed weapons	Bound over.
133	Auto law	Continued April 26.

APRIL 22.—COURT-ROOM No. 2

<i>No.</i>	<i>Charge</i>	<i>Disposition</i>
1	Liquor law	Continued to April 29.
2	Liquor law	\$50 of fine suspended.
3	Liquor law	Discharged.
4	Liquor law	Discharged.

<i>No.</i>	<i>Charge</i>	<i>Disposition</i>
5	Liquor law	Motion granted, \$50 of fine suspended.
6	Liquor law	Original sentence.
7	Liquor law	Continued April 29.
8	Liquor law	\$300 and costs, "motion in mitigation" April 29.
9	Liquor law	Motion granted, fine suspended.
10	Liquor law	\$200 and costs, "motion in mitigation" May 6.
11	Assault and battery	\$25 and costs, "motion in mitigation" May 6.
12	Assault and battery	\$10 and costs, "motion in mitigation" April 29.
13	Assault and battery	Continued April 29.
14	Traffic ordinance	\$10 and costs.
15	Traffic ordinance	\$15 and costs.
16	Traffic ordinance	Discharged.
17	Traffic ordinance	Motion granted, fine suspended.
18	Obtaining money under false pretense	Discharged, want of prosecution.
19	Dance-hall ordinance	Original sentence.
20	License ordinance	Capias ordered.
21	Receiving stolen property	Continued April 29.
22	Manslaughter	Discharged.
23	Manslaughter	Discharged.
24	Misrepresentation by married man	\$25 and costs, "motion in mitigation" April 30.
25	Burglary	Bound over.
26	Liquor law	\$200 and costs, "motion in mitigation" April 30.
27	Liquor law	\$200 and costs, "motion in mitigation" May 6.
28	Liquor law	Bound over.
29	Liquor law	Continued April 29.
30	Traffic ordinance	Capias.
31	Auto law	\$5 and costs.
32	Auto law	\$5 and costs.
33	Auto law	Bound over.
34	Robbery	Bound over.
35	Auto law	\$5 and costs.
36	Auto law	\$5 and costs.
37	Traffic ordinance	Capias.
38	Vehicle ordinance	\$5 and costs, suspended.
39	Liquor law	\$100 and costs, "motion in mitigation" April 29.
40	Liquor law	\$100 and costs, "motion in mitigation" May 6.
41	Auto law	Nolle.
42	Auto law	April 29.
43	Auto law	Continued May 5.
44	Auto law	\$30 and costs, "motion in mitigation" April 25.
45	Auto law	\$25 and costs.
46	Auto law	\$5 and costs, "motion in mitigation" April 28.
47	Auto law	\$5 and costs.
48	Auto law	\$5 and costs, "motion in mitigation" April 29.

<i>No.</i>	<i>Charge</i>	<i>Disposition</i>
49	Auto law	\$30 and costs and 10 days. Days suspended, "motion in mitigation" April 29.
50	Auto law	\$5 and costs.
51	Traffic ordinance	\$15 and costs.
52	Traffic ordinance	\$15 and costs.
53	Traffic ordinance	\$5 and costs.
54	Traffic ordinance	\$5 and costs.
55	Traffic ordinance	\$15 and costs.
56	Traffic ordinance	\$10 and costs, "motion in mitigation" April 30.
57	Shoot to wound	\$25 and costs and 30 days.
58	Contempt	Discharged.
59	Liquor law	Motion granted, \$150 of fine suspended.
60	Assault and battery	\$25 and costs and 30 days suspended.
61	Liquor law	Continued May 6.
62	Traffic ordinance	May 24 continuance.

There are several interesting phenomena disclosed by this table. There is especially the fact that all sorts of cases are indiscriminately lumped together on one morning's docket and called, heard, and decided without segregation of the trials of state from municipal cases, state felonies from state misdemeanors, crime cases from vice cases, grave cases from lesser ones. They are not called in the order in which they appear on the docket. Under the orders of the presiding judge of the court certain classes of cases are given precedence in the call, as, for instance, those in which the night duty policemen are witnesses, or cases of defendants who are in jail. Whether this order is fully adhered to is doubtful. Within any class of cases the order of call is largely in the control of the clerk in the room. In the answers to a questionnaire sent to members of the Cleveland bar, many lawyers complained of the delays to which they were subjected in sitting around waiting for the cases to be called; and in many of the answers this was given as the reason why lawyers avoid practice in the criminal branch of the Municipal Court.

This list of cases shows some disposition or order in 71 cases in Room 1 in the course of two and three-fourths hours, making about two and one-fourth minutes per case, and 62 cases in Room 2 in about three and one-fourth hours, making about two and one-half minutes per case. These dockets of April 22 were by no means abnormally heavy. Almost always on Mondays, and very frequently on other days, the number of cases exceeds the number on that day. Of course, the judges show variations regarding the speed with which they dispose of a case, some taking more time than others. The time here noted of two and one-fourth and two and one-half minutes per case does, how-

ever, represent a fairly habitual and normal rate. Of course, not all of the cases involved a trial or hearing of evidence. Continuances involved no trial on that date, and in the list of cases disposed of were a number with pleas of guilty. But even these cases with pleas of guilty involved, on the question of the amount of sentence, some inquiry into the facts concerning the offender and the facts of the offense.

By way of contrast, it is interesting to note the time given by this same Municipal Court to petty civil cases which fall within its jurisdiction. For instance, on this same date of April 22, 1921, the docket in Room 5 contained 18 items. Of these 18, 12 involved practically no hearing of evidence or argument on part of the court, being judgments by consent of parties, or other matters summarily disposed of. Four related to motions. That left only six cases in which the court was called upon to determine questions of fact, and in one of these, involving the possession of real estate, the defendant failed to appear. One case was decided for the defendant. In the other five, judgments were rendered in the sums respectively of \$76, \$99, \$400, and \$84, sums less in amount, measured in mere dollars and cents, than were involved in many of the cases on the criminal docket. That represented a full day's work, morning and afternoon, of one of the civil rooms, being that one of the civil rooms which on that day had the largest docket and also the largest number of contested cases.

NEGATIVE PART PLAYED BY PROSECUTOR

The descriptions of the Municipal Court in operation disclose the negative part that the prosecutor plays in both the trial and the disposition of the cases, and, with rare exception, his part is as negative in the major offenses as in the lesser ones. Even more negative is his rôle as a source of influence in the general conduct of the proceedings. At no time did he ask that the group surrounding the bench be freed from those who had no business there. At no time did he ask that the aisles be cleared or the noise of moving feet and the chatter be suppressed. He seemed the least influential person in the room.

A jury trial by its very nature compels an orderliness and openness of procedure. Each side desires that the jury hear its witnesses. In trials before a judge without a jury, this restraining influence is absent, and both court and attorneys are apt, unless they make special effort to guard against it, to let themselves drift into the habits which have been described in this chapter.

TABLE 4.—PROSECUTIONS FOR PERJURY AND SUBORNATION OF PERJURY
(From the annual reports of the clerk of the Common Pleas Court)

	1910		1911		1912		1913		1914		1915		1916		1917		1918		1919		1920		Totals	
	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons	In-dict-ments	Per-sons
Indictments pending Jan. 1	1	1	2	2	1	1	2	2	1	1	..	..	2	2	..	..	..	..	1	1	16	16	1	1
Indictments within year	4	4	..	..	2	2	1	1	3	3	4	4	3	3	8	9	2	2	17	17	7	7	51	52
Total indict-ments	5	5	2	2	3	3	3	3	4	4	4	4	5	5	8	9	2	2	18	18	23	23	52	53
Convicted	3	3	1	1	1	1	1	1	2	2	1	1	1	1	1	1	1	1	1	1	2	2	18	18
Acquitted	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	2	2
Quashed or "nolle"	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Pending Dec. 31	2	2	1	1	2	2	2	2	2	2	2	2	..	..	7	8	1	1	1	1	17	17	29	30
Total cases	5	5	2	2	3	3	3	3	4	4	4	4	5	5	8	9	2	2	18	18	23	23	53	54
Fine	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Imprisonment	3	3	1	1	..	..	..	..	..	..	..	..	..	..	1	1	..	..	1	1	2	2	14	14
Fine and im-prisonment	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Total sentences	3	3	1	1	..	..	1	1	2	2	1	1	..	..	1	1	..	..	1	1	2	2	3	3
	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	17	17

! These two groups of figures fail to check owing to the error appearing between 1913, line 7, and 1914, line 1.

NO STENOGRAPHIC REPORTS—OPPORTUNITIES FOR PERJURY

Except where the defendant desires to have a record of the case, the testimony is not taken down stenographically or otherwise. The trials are ground out without attempt on the part of anybody, judge or prosecutor, to bring out all the facts in any case, and seldom is any witness permitted to complete his story. One of the judges of this court, in the course of an interview, stated in a casual manner, as though expressing something of no significance, that, in preliminary hearings of felony cases, as soon as he hears something which, taken by itself, would justify passing the case on to the grand jury, he hears no more and binds the case over, and that he treats these hearings as nothing more than stepping-stones to the grand jury.

This absence of a stenographic report of the testimony, taken in connection with the whole atmosphere of the court, obviously produces opportunity, if not inducement, for perjury. The people of Cleveland are convinced that perjury has been very prevalent in the trial of criminal cases, and the criminal court reporters of the newspapers affirm this beyond a shadow of doubt. In view of this general opinion, which surely has considerable basis in fact, it will be interesting to note the exceedingly small number of cases of prosecution for perjury and the exceedingly smaller number of successful prosecutions for perjury. Table 4 gives the statistics of all prosecutions for perjury and subornation of perjury for the eleven years 1910 to 1920 inclusive, with the results thereof, as reported by the county clerk to the Secretary of State.

CHAPTER IV

THE MUNICIPAL PROSECUTOR'S OFFICE

HISTORY

IN 1912 the criminal branch of the Municipal Court of Cleveland became the successor of the police court, which had been in operation since 1853. It also succeeded to the criminal jurisdiction of the justices of the peace functioning in Cleveland. Justices of the peace, with certain criminal jurisdiction, had existed in Cleveland on the territory which is now Cleveland since 1798. The municipal prosecutor is the successor of the prosecuting attorney of the police court, an office created in 1854. For more than a century this court and its predecessors have been the examining courts for state felonies and for almost seventy years have had general jurisdiction to try city and state misdemeanors. The nature of the jurisdiction has not changed, but with the growth of the community and the consequent growth of the number of arrests and offenses and the development of the criminal law, both State and municipal, the volume of work passing through this court and office has grown enormously. Table 5 gives the growth, as shown by statistics, to the extent obtainable, of the years 1863, 1880, 1890, 1900, 1910, and 1920, of the area and population of Cleveland, the number of arrests, the number and compensation of prosecutors, assistants, and office force.

TABLE 5.—COMPARISON OF GROWTH OF POPULATION, NUMBER OF ARRESTS, NUMBER AND SALARIES OF "POLICE COURT" PROSECUTORS, 1863 TO 1920

Area square miles	Year	Population of Cleveland	Number of arrests in Cleveland	Number of police or Municipal Court prosecutors and assistants	Size of clerical force	Payroll of office exclusive	Salary chief prosecutor
..	1863	58,241 ¹	1,687	..	..	..	..
..	1880	160,146	7,432	1	..	..	..
27.78	1890	261,353	9,616	2	..	\$1,600	\$2,300
33.94	1900	381,768	19,923	4	..	5,300	3,000
45.90	1910	560,663	7,185	4	..	..	..
56.65	1920	796,841	27,615 ²	6	..	{ 12,300 } { 15,300 }	{ 3,500 } { 4,000 }

¹ Taken from estimates of Chamber of Commerce.

² 79,897 warned and released.

The large decline in the number of arrests in the year 1910 was the result of the so-called "golden-rule policy" of the then Chief of Police, Fred Kohler, who instituted a general régime of warning, advice, and persuasion, as distinguished from arrest and prosecution. The facts outstanding from this table are the continued absence of any clerical force despite the enormous increase in the volume of work, and the absence of any substantial increase in the salary of the chief prosecutor.

OFFICE ORGANIZATION

Reference has been made to the importance of the aspect of the place where the people of a city in general first come into contact with justice in operation. In a large percentage of cases complainants, accused, and witnesses have occasion to come to the prosecutor's office before going into the court-room. Furthermore, thousands of complaints which do not result in arrest are brought to the prosecutor's office and there aired, discussed, and disposed of. In fact, the municipal prosecutor estimates that he sifts out more cases than he permits to go into the mill. Thus this office is a point of contact for a larger number of individuals than any other spot in the city.

The force of the municipal prosecutor's office consists of the chief prosecutor and five assistants.¹ The total office space consists of five small rooms, 7 by 9 feet in size—just enough for a desk and a chair, the number of rooms being one less than the number of prosecutors, so that two of the assistants occupy one of these cubby-holes. There are no clerks, no stenographers, and no messengers. The suite also contains a small room used as a combination of general waiting-room and the office of the telephone operator of the Municipal Court clerk and prosecutors. The telephone desk is railed off from the remainder of the room, leaving a space of 10 by 15 feet which serves both as a waiting-room and a conference room.

There is no office system nor organization whatsoever. Two assistants are assigned to the court-rooms for the trial work there, with others assigned specially to court work elsewhere, such as error cases in the Court of Appeals and jury cases. There is no distribution or specialization of work, whether of preparation or trial, according to classes of cases, importance of cases, or any other basis of classification. A visitor, whether he has a complaint or desires a prosecution instituted, a police officer who desires an affidavit made, or any other person on any other mission, chooses the particular member of the force to whom he will

¹ Since this report was written, a sixth assistant has been appointed.

submit his business. At the busy hours of the day indiscriminate masses of applicants and visitors jam the offices and the adjacent hallways, each person waiting for the particular prosecutor whom he or she has, by design or accident, chosen.

There are no regular office rules laid down by the chief prosecutor regarding the submission to him of a particular type of problem. There are no detailed, clearly defined policies regarding continuance of cases, preparation of cases, the position to be taken by the office on difficult or doubtful questions of law, or any other recurring problem. Generally speaking, each assistant pursues his own policy or lack of policy, his own interpretation of the law, his own methods.

Edward C. Stanton, who, previous to his election as county prosecutor, had been chief prosecutor of the Municipal Court, was asked why he had not disciplined one of his assistants in his old office for certain improper conduct. His answer was that he had no authority over the assistant prosecutors, that they were appointed just as he was and acted on their own responsibility in all cases. It was not clear whether he meant that the chief prosecutor and all the assistants were appointed by the Director of Law, whom the city charter designates as the appointing officer, or by the Republican "boss," who is popularly credited with the actual appointing power. As a matter of fact, the Director of Law devotes himself almost exclusively to the civil side of the work of the city's law department, and practically finds little time or energy for the administration of the criminal division. As things are at present, this latter division enjoys only slight executive control or direction.

LAXITY IN CUSTODY OF AFFIDAVITS

There is dangerous laxity in the care of the affidavits. On the basis of the information submitted by complainants or police officers, the prosecutors prepare the affidavits setting forth the charge. The warrant of arrest and all subsequent proceedings are based upon the affidavit. No further step in the prosecution of the case is possible without the affidavit. There is no office system whereby these affidavits are placed in charge of any official or attaché of the prosecutor's office. An affidavit remains in the hands of the particular prosecutor who prepared it until he finds it convenient to carry or send it to the office of the clerk of the Municipal Court. There it is placed in a box. The affidavits are used by the clerk as a basis for the drafting of warrants, and after having served as such they are placed in the files of the clerk's office. They are not sealed, and no copy is made for nor kept in the prosecutor's office. Obviously such a system or lack of system furnishes opportunities for

the mysterious disappearance of affidavits, and such disappearances are said to take place occasionally.

RECORD SYSTEM

The record system in any office or court with such a volume of work as in the Municipal Court of Cleveland is of vital importance. The records may be said to have two functions: they are instruments for promoting the efficiency of the work itself, and also are the means whereby the department head or the public can appraise the accomplishment of the office.

The municipal prosecutor's office has no records or files. There is no docket—no record of cases pending or past. Memoranda made by the individual prosecutor are kept or disposed of by him as he may please. There is no means within the office itself by which the chief prosecutor can ascertain the history or status of any case or check the work of an assistant.

For the records of the work of his office and of the status of cases in his charge the prosecutor is dependent upon the records of the Municipal Court itself. Consequently, the study of the effectiveness of the present system requires a detailed examination of the record system of the Municipal Court and the office of the Municipal Court clerk.

The first entry in any case takes place upon the arrest of the accused person. This is made upon the police blotter in the office of the clerk, a large book about two and one-half feet square. Exhibit A illustrates the nature of this entry.¹

From this police blotter and the continuation docket which will be shortly described the court officer in the Division of Police makes up the "prosecutor's docket." This prosecutor's docket contains a full list of all the cases to be called in the two rooms of the court at the following court session, and contains all cases of arrest from 6 A. M. of one day to 6 A. M. of the following day, which is the day of the call in court. Exhibit B is an illustration of the number of columns, the titles of columns, and the nature of the entries. The number in the first column (161, etc.) is the number or order of the case on that day's docket. The entries in the "Disposition of case" column are made after the case has been called and has received that day's disposition by the court.

About 7 in the morning this book is sent to Court-room No. 1. At that time it contains all that it will finally contain, except the notation

¹ The illustrations in this chapter are taken from the actual records, all notations retained as on the originals, with the exception of the names, which are fictitious.

EXHIBIT A.- POLICE BLOTTER

Pre- dict	Name	Offense	By whom arrested	Resi- dence	Occupa- tion	Na- tivity	Social condition		Education		Sex		Color		Age		Hour of arrest		Remarks	Disposition of case	
							Mar- ried	Sin- gle	Able to read	Un- able to read	M.	F.	W.	Col.			A.M.	P.M.			
1	John Doe	Violation traffic ordi- nance	Wild, 311	566 E. 117th St.	Clerk	U.S.	..	1	1	..	1	..	1	..	30	..	8.05	..	Operating an auto in careless manner on E. 6th St. General prin- ciples	Bond, per- sonal costs	\$10 and costs
1	Richard Roe	Sus- picious person	Stricky, 139; Swind- man, 759; Mc- Na- mara, 285	No home	Barber	U.S.	..	1	1	..	1	..	1	..	30	1.10	..	..		..	\$25 and costs; 30 days
2	John Jones	Man- slaughter	Sergt. Vas- binder	849 E. 95th St.	Chauffeur	U.S.	..	1	1	..	1	..	1	..	26	1.30	..	..	Killed X and Y at E. 17th St. and Payne Ave. while operating auto truck	Wm. Jones No \$3,000 R. papers E.	No

: The entries in these columns are, of course, put in after the trial and not at the time of arrest.

of the room to which the case is to be assigned and the disposition of the case. The column marked "Plea" is not used at all.

Then the clerk in Room No. 1 has the duty of distributing to Court-rooms Nos. 1 and 2 the cases on the prosecutor's docket. He does this by assigning the traffic cases, the State examination cases, and most of the liquor cases to Room 2, and if there are not enough cases for Room 2, he throws in a few cases of other classes; or if the traffic, liquor, and State examination cases amount to more than one-half of the day's docket, he will assign some of them to Room 1. If the case is assigned to Room No. 1, no notation is made on the docket, since the docket itself is in Room 1. If assigned to Room 2, as appears from Exhibit B, the clerk stamps thereon "Court-room No. 2."

EXHIBIT B.—PROSECUTOR'S DOCKET

	Person arrested	Offense	Plea	Disposition of case	Date of arrest	By whom arrested	Name of complaint and remarks
161	James Brown	Burglary and larceny	..	Court-room No. 2: B.O. 1	May 23	Lynch, 191	
167	Jane Doe	Contempt	..	Discharged 7	May 23	..	
168	Same	Common prostitute	..	Error 8	Dec. 1	..	

With the prosecutor's docket is sent up from the police department an assignment list of cases. This contains merely the numbers of the cases, the names of the defendants, and the charges. After the cases have been divided between the two rooms, "Room 1" or "Room 2" is rubber-stamped on this list, and the list is posted in the hallway outside the court-rooms. Exhibit C illustrates the set-up of this assignment list after it has been so stamped.

EXHIBIT C.—ASSIGNMENT OF CASES, TUESDAY, MAY 24, 1921

No.	Name	Charge	Court-room
51	Fred Miller	Neglecting parent	..
52	Anna Kinney	..	..
53	Mary Smith	Keeping house ill fame	Court-room No. 2
54	Frank Butler	Visiting house ill fame	Court-room No. 2

The cases on the prosecutor's docket and on the assignment list are numbered consecutively each day, beginning with 1, in the order in which

they appear on the docket, which corresponds roughly to the order of the arrest.¹

A docket for Room 2 is then made up from the assignments to that room on the prosecutor's docket, these cases in Room 2 being numbered from 1 up consecutively. Exhibit D is an illustration from a part of this Room 2 docket, the entries in the third column, of course, having been made in accordance with the disposition of the case on the morning indicated.

EXHIBIT D.—DOCKET—ROOM 2

SATURDAY, MAY 21, 1921

No.	Name	Offense	
30	Aaron Rosenberg	Traffic ordinance	Cap.
31	Pat Gray	Traffic ordinance	May 26
32	Dan White	Traffic ordinance	May 26
33	Aubrey Greene	Auto law	Cap.
34	Mamie Biller	Common prostitute	25 C. S. S.
35	Same	Contempt	Dis.
36	Harry Kane	Obtaining money by false pretenses	25 C. 30 D. S. S.
37	Leon Schmitt	Obtaining money by false pretenses	25 C. 30 D. S. S. ²

From the prosecutor's docket, a docket or calendar, called the "judge's docket," is made for the judges in each of the rooms. It gives the number of the case, the name of the defendant, and the charge. This docket is before the court during the entire session, and as each case is disposed of the judge writes opposite the defendant's name the particular disposition that has been made. Exhibit E is a copy of portions of the judge's docket in Room 1.

The file in each case consists of the affidavit, the warrant of arrest, the subpoenas for witnesses, the cost bill, and the bail bond, if any. The file for each case, with a pencil notation of its number for the day somewhere on the outside, is placed in the hands of the clerk in the particular room to which the case has been assigned. The cases have no numbers except the consecutive numbers 1, 2, 3, etc., on the daily dockets as above described. As each case is ruled upon, the clerk notes the disposi-

¹ A case does not receive any number which belongs to it throughout its history, and by which it appears on the dockets and records of the court. After the case is completed, the file of the papers in the case receives a number.

² "Cap." means *capias* issued; "May 26"—continued to May 26; "Dis."—discharged or dismissed; "25 C. 30 D. S. S."—sentence of \$25.00 and costs and 30 days' imprisonment, sentence suspended.

tion of it on the back of the affidavit, which acts as the wrapper for the file. At the close of the day's session the court officer in each room takes the judge's docket and copies therefrom the entries of disposition into the prosecutor's dockets in Room 1 and Room 2, as the case may be. Then these entries are recopied from the Room 2 docket into the original prosecutor's docket. Thus that day's prosecutor's docket contains entries of that day's disposition of all the cases docketed for the day.

EXHIBIT E.—JUDGE'S DOCKET, VOL. 50—ROOM 1

336	September 30, 1920		
141	James Robt. Henry Jackson	Arson	Court-room No. 2
142	Michael Dowd	Bastardy	Court-room No. 2
356	Tuesday, October 5, 1920		
21	Lester W. Klein	Susp. person	Nolle pros. (bound over to grand jury)
22	Ira Luff	Susp. person	P.G. 25 and C. and 30 D. Sus. one year pro.
23	Earl Brown	Susp. person	Con. Oct. 9
24	Arthur White	Susp. person	Nolle pros. (police dept.)
25	Napeen T. Klopowsky	Assault and battery	P.N.G. 25 and C. and 30 D. Sus. one year prob.
26	John Edwards	Assault and battery	Dis. want pros.
27	Herman Keith	Assault and battery	Discharged
28	Aug. Krinski	Assault and battery	Con. Oct. 20 ¹

A considerable number of the cases on the docket of any date are continued to some subsequent date. From these notations of continuances a "continuation docket" is made up, having a separate page for each day to which any of the cases has been continued. Exhibit F is an illustration of this continuation docket, showing the list of cases which have been continued to April 22, 1921. It does not show the day on which the case made its first appearance on the prosecutor's docket or court calendar, though, of course, that date was presumably the day of arrest or the day immediately following.

At the close of the day's session the file in each case, with a notation thereon of the action of the court, is delivered to the journal clerk, who proceeds to make up what is called the "journal and execution dockets," which is the official record of the cases. Separate journal and execution dockets, identical in form, are kept for city and State cases. This docket

¹ "P.G." means plea of guilty; "Sus."—suspended; "pro" or "prob."—probation; "con."—continued; "P.N.G."—plea not guilty; "Pros."—prosequi or prosecution.

is illustrated by Exhibit G, containing parts on two dates of journal and execution docket No. 23 in State cases. The numbers 14567 and 14713 are the page or folio numbers of this docket.

EXHIBIT F.—CONTINUATION DOCKET

FRIDAY, APRIL 22, 1921

Name	Charge	Date of last continuance	Date of arrest	Officer
James Carpenter	Defrauding innkeeper	March 18	March 9	Diskowsky Det. Jones, 287
Michael Burke	Violating liquor law	March 23	December 10	

A case travels on the name of the defendant—as, for instance, State of Ohio v. Leslie Stephens—until it is finally disposed of. The result of this is that, if there are three or four charges for the same crime against the same man, as is often the case, there is no possible way of telling which entry in the execution docket applies to which case, although the answer might possibly be traced by means of the pencil notations on the back of the affidavit. Each time a case appears in court it is entered upon a different page of the journal and execution docket, so that, if a case be continued 10 times, as is not infrequent, the entries regarding it will appear on 10 different pages of the journal and execution docket, and will frequently be distributed through two or three volumes of the book. At no one place on the records, with the exception of the pencil notations on the back of the affidavit, is it possible to find a full record of the history of any case.

As will be seen by an examination of Exhibit G, the journal and execution docket shows the date *to* which, but not the date *from* which, a case has been continued. To illustrate by the case of State of Ohio v. William Williams (Exhibit G), the entry shows that the case was continued to October 19. The fact that the journal records "Defendant in court—case continued," etc., shows that this was not the first appearance of the case, for on the first appearance there will always be the entry, "Affidavit filed—warrant issued," etc. There is, however, no way of telling from this page of the journal the original date on which the case appeared in court or the previous continuances, and the tracing of the full history of any case is often a work of considerable difficulty and expenditure of time. We can, of course, go to the index, and trace back therein the name of the defendant until we arrive at the first entry

in the case. In a case which is pending for several months, involving many continuances or other steps, this tracing through the index is an arduous and lengthy task.

EXHIBIT G.—JOURNAL AND EXECUTION DOCKET

14675 Thursday, Sept. 23, 1920 (Journal and Execution Docket) 14675

	Date	Amt. paid	Witness fees	Fines	Costs	Total fines and costs	Court costs	Bailiff's fees	Jailer's fees	Days
State of Ohio vs. Leslie Stevens	Oct. 1									Receiving stolen property. Affidavit filed, warrant issued and returned. Defendant in court and examination demanded. Case continued to Oct. 1.
State of Ohio vs. James Robert Henry Johnson	Sept. 30									Arson. Affidavit filed, warrant issued and returned. Defendants in court and examination demanded. Case continued to Sept. 30.
State of Ohio vs. Wm. Williams	Oct. 19									Assault to rape. Defendant in court. Case continued to Oct. 19.

14713 Sept. 30, 1920

67,567 State of Ohio vs. James Johnson P. Colosso C. Pagy R. Carran E. Carran W. Levy L. Levy						\$22.35	\$22.35	\$5.00	\$8.35	\$1.00	State examination. Arson. Defendants in court. Examination had and he is required to furnish bail in the sum of \$1,000 for his personal appearance at the present term of the Court of Common Pleas of Cuyahoga County. And in default of bail to be committed to the jail of the county aforesaid; which was accordingly done.
			\$2.00								
			\$2.00								
			\$2.00								
			\$1.00								
			\$1.00								
			\$1.00								

Separate indices are kept of State and city cases. Exhibit H is an exhibit of parts of pages 164 and 276 of Volume 6 of the Index of State Cases.

The index is not as helpful as its name might indicate. The index in the civil branch of the Municipal Court is extensively subdivided, both as to first and last names, which makes it comparatively simple to locate

the case of any particular defendant. In the criminal branch, however, there is just one heading for all defendants whose names, we will say, begin with "T." To locate a particular man whose name begins with "T" necessitates going over about 26 times as many names as would be necessary if the index were divided as in the civil branch. The tracing of the police court record of a man who has been before that court with some frequency would be a task of enormous difficulty and delay, and it is noteworthy that in the trial of the cases which were observed for this survey the police court record of the defendant was practically never produced or mentioned.¹

**EXHIBIT H.—PARTS OF PAGES 164 AND 276 OF VOL. 6, INDEX OF
STATE CASES**

164	State	Index	Vol. 6
Surname	Christian name	Folio	1920 date
Jackson	John	14672	Sept. 23
Johnson	Henry	14712	Sept. 23
		14675	
Washington	Willie	14681	Sept. 24
276			
Robert	James	14675	Sept. 23

In Exhibit H, in the case of Henry Johnson, the figures 14712 and 14675, with the date, September 23, indicate that the case originally appeared on the docket September 23, that the first entry in the case is recorded on folio 14675 of the journal and execution docket, and the last entry in the case on folio 14712 of that docket. That case, therefore, appeared twice on the court docket and there were two entries or orders. A large number of cases, however, have more numerous appearances and entries; and frequently, when the time arrives for indexing a later or trial entry, the clerk is unable to find the place where the case was previously recorded, and he proceeds to note the later entry at a different place in the index, with the result that the case is twice indexed, and, so far as the index itself indicates, there is no connection between the two entries.

Under this record system the case receives no number by which it is recorded and indexed, and its history is not recorded or indicated at any single part or place of any single record book. The cumbersomeness of

¹ One of the judges complained of the habitual failure of the prosecutor to bring this record to his attention.

the system, both as a method of recording and as a means of tracing the history of a case, as well as the liability to error, is disclosed in the above illustrations.

Looking at Exhibit H, we find on page 164 of the index a case against Henry Johnson with reference to folio 14675 of the journal and execution docket, and on page 276 a case against James Robert with reference to the same folio. Turning to this folio 14675, as shown on Exhibit G, we find the case of State of Ohio v. James Robert and Henry Johnson, with the following entry:

"Arson. Affidavit filed, warrant issued and returned. Defendants in court and examination demanded. Case continued to Sept. 30."

This same index, page 164, gives folio 14712 as the place where the final entry in the Henry Johnson cases is recorded. A thorough examination of folio 14712, however, disclosed no mention whatever of any Henry Johnson case. The list of names on the prosecutor's docket for September 30 was then searched, but without finding any Henry Johnson or any James Robert. The list of arson cases on the docket of that day was then traced, and disclosed a charge against James Johnson, which, as appears from Exhibit G, was recorded on folio 14713 of the journal and execution docket. So a case which, upon the official record of the court, on September 23 with *two* defendants, James Robert and Henry Johnson, terminated on that record with one defendant bearing the combination name of James Johnson. In an effort to solve the mystery, the original files were examined. This affidavit is not quite clear as to whether it charges one or two persons with the offense. But the warrant of arrest was made for the arrest of two persons, resulting, however, according to the return of the warrant, in the arrest of one person, James Robert Henry Johnson.

While engaged in examining the journal and execution docket (city cases) for a purpose unrelated to this matter of the record system, the following entry under date of January 19, 1921, was noted:

"Blanche Jackson, soliciting for immoral act, motion in mitigation granted, sentence suspended, twelve months' probation."

We were immediately impressed by the fact that this entry did not disclose *when* the case began or what sentence was originally imposed or *when* the sentence was originally imposed.

It occurred to us that this might be a fair case in which to ascertain the time and energy involved in tracing the record history of a case, and it was chosen for that purpose.

The first step necessary to trace the case back from the entry of

January 19, 1921, was to look back through the pages of the name index under the letter "J," beginning with January 19, 1921. This required looking through all names in six columns, each containing about 50 names written in a rather illegible hand. The name Blanche Jackson was finally found under date of August 23, 1920, with reference to folio 8894. The next step necessary was the examination of the city journal and execution dockets, to ascertain the volume in which folio 8894 or the records of August 23, 1920, might be found. After handling several of these volumes, Volume 14 was discovered to be the desired one, and on folio or page 8894, together with another entry and six or eight other cases, was found the following entry:

"Stella Brown, Blanche Jackson, soliciting for immoral act, affidavit filed, warrant issued, defendants in court, case continued to date set opposite respective names."

After the name of each defendant was the date, "September 14." It was then necessary to turn over about 100 pages of this volume until arriving at the pages dated September 14. The next necessary step was to look carefully through the four large pages devoted to that date, with six to 10 cases on each page, until the names of Stella Brown and Blanche Jackson might be discovered. The entry opposite their names: "defendants in court, case continued to September 15." September 15 being the next day, it was comparatively easy to discover the pages devoted to that day, and on the fifth or sixth subsequent page was found the entry:

"Defendants in court and plead guilty, hearing is had, and each is sentenced to thirty days and to pay the costs. Days suspended, one year probation, motion in mitigation filed, case continued to September 18."

Turning over some 10 or 15 pages, the four pages devoted to September 18 were found, on one of which the entry for Stella Brown showed that she had paid the costs, whereas the entry relating to Blanche Jackson was found on an entirely different page and read: "Case continued to September 24." To find the pages devoted to September 24 required the turning over of 20 to 30 intervening pages. Six pages were given to September 24, and the entry "Blanche Jackson, continued to September 30," was found by a careful examination of these six pages. Twenty to 30 pages again intervened between these two dates of September 24 and September 30, and on one of four "September 30" pages was the Blanche Jackson entry: "Affidavit filed, warrant issued, defendant in court, case continued to October 15." This is the form of entry usually used at

the very beginning of a case, and its use at this stage of the Jackson case must have been an error. To reach the pages devoted to October 15 required the turning over of 50 to 70 intervening pages, and on one of the October 5 pages was found the entry: "Continued to November 12." Turning to the back of Volume 14 in hand, it was disclosed that it did not reach November 12, and therefore Volume 15 had to be found and examined. On about the fourth page occurred the entry: "Blanche Jackson continued to November 27." Turning over the 60 to 75 intervening pages and examining the four pages relating to November 27 was found the entry: "Blanche Jackson, continued to December 17." Similarly turning over from 60 to 75 pages intervening and looking through the four pages devoted to December 17 was found the entry: "Blanche Jackson, continued to January 12." Similarly turning over about 100 intervening pages and looking through the five pages given to January 12, the following entry appeared: "Blanche Jackson, continued to January 19." Turning over the 20 to 30 intervening pages and examining the four pages of January 19 was found the entry which had first attracted our attention and which at the time of the examination was the last entry of the case, namely:

"Blanche Jackson, motion in mitigation granted, sentence suspended, twelve months' probation, case no. 44672."

The time and difficulties involved in searching the history of a case cannot be fully realized from reading a mere statement such as the above. To be understood they need to be experienced. If the offense happens to be a State rather than a city case, there are eight or 10 pages of the journal and execution docket for every date, as compared with four or five pages in city cases. If the case happens to be one of a type of frequent occurrence, such as violation of liquor law, traffic ordinance, or being a suspicious person, a particular name which is being traced will often be found in a column containing 8, 10, or 20 names, all grouped under one case involving the same offense. On one page of the journal and execution docket defendant's name will be found in one group, and on another page in the midst of an entirely different group, and on another page entirely alone.

As has been stated above, the clerk in the court-room notes each disposition or order on the back of the affidavit, and consequently one might think that the history of the case can be most easily discovered from these pencil memoranda on the back of the affidavit. However, those memoranda do not constitute the official or authentic record.

They are in pencil, and written upon a document open to access and examination by anyone.

In the Blanche Jackson case we did not stop with the journal and execution docket. That docket showed that on September 15, 1920, defendant was sentenced to thirty days and to pay the costs and that the days were suspended. There followed a number of appearances in court and continuances, and it seems strange that so much trouble should have been taken to avoid the payment of \$2.80 costs. The file of original papers was, therefore, examined, and the affidavit contained the pencil notation: "Costs and thirty days, m.m. 9/18." This notation did not say that the sentence of imprisonment had been suspended, and therein differed quite vitally from the entry on the record. To explain this discrepancy, the judge's docket or calendar for September 15 was examined. This involved obtaining and looking through four volumes of calendars for Room 1 to find September 15. This was necessary because there is no indication on the back of any volume as to the period covered by it, and the docket or calendar books in Room 1 are used only on alternate days, so that September 14 docket or calendar would be in one volume and September 15 in another. When this calendar for September 15 was found, it disclosed that the case had been assigned to Room 2, and the handling of two volumes of the court calendar for Room 2 was necessary to locate the September 15 entries. These calendar books are not alternate in Room No. 2 as in Room No. 1. The entry was finally found, reading: "39 Blanche Jackson, soliciting for immoral act, jury waived, G. C. and 30 days m.m. September 18—40 Stella Brown, soliciting for immoral act, G. C. and 30 days, days suspended one year, m.m. Sept. 18": which, being interpreted, means that the sentence of Stella Brown as to days was suspended, whereas the sentence of Blanche Jackson was not. So the record of the case on the record of the court, namely, the journal and execution docket, differs from the actual judgment of the court as disclosed on the judge's docket.

Another point to note is that neither the files nor the records give the name of the particular prosecutor who tried the case nor the name of the defendant's attorney. The chief prosecutor may remember in a general way the assistant who had charge of cases called in any one of the court-rooms at a designated period. But even these designations are not strictly adhered to, and the files and records themselves give little assistance to the chief prosecutor, the court, or the public in investigating the efficiency of the work of any member of the force or in locating responsibility in individual cases under examination. In contested cases there is great need for communication with the defendant's attorney, and

in any study of the administration of justice there will arise occasion when it becomes important to know the names of specific defendant's attorneys.

In the civil branch of the Municipal Court, 28,463 cases were docketed in 1920—more, therefore, than in the criminal branch. Every one of these civil cases had its space on the records in which every step in the case, including names of attorneys on both sides, was recorded: another indication of the relative solicitude shown for the administration of civil and criminal justice.

PERSONNEL

The man on the street, in his rough and ready appraisal of any institution, is apt to interpret it exclusively in terms of the ability and character of the persons conducting it. Things go well because A is honest or capable, or go badly because A is corrupt or inefficient. This is a superficial view. The system of organization, the traditions of the office or institution, community factors or forces, need to be analyzed and their effects pointed out. Undoubtedly the character and competence of the men composing the prosecutor's office are important factors in the result of its work. In truth, the competence and honesty of the individuals in the office are at the same time an operating cause of the standards attained and an effect of other conditions and factors in the situation. The inadequacy of the men themselves, if such inadequacy exists, would be a fact of the situation, just as the inadequacy of any other facility engaged in the administration of justice in Cleveland. Able and scrupulous men sometimes produce splendid results with poor facilities, and, more important, they will often improve the facilities.

The municipal prosecutor's office has been Republican since January 1, 1916, the present being the third successive administration of that political complexion. The table on page 49 gives the names of the members of this office through four city administrations, with political affiliations, the period of service, age at commencement of service, years at the bar at commencement of service.

In most human affairs there is no sharp dividing line between fact and opinion; and this matter of the character and ability of an official lies in the twilight zone. The subject is delicate; dogmatic statements, based on impressions, must be avoided. Conversations were held with many Cleveland lawyers, practically all of whom seemed to agree that, taking the office by and large, the caliber of members of this office is not

proportionate to the positions they occupy. In a questionnaire sent to all the members of the bar was the following request:

"Kindly state anything that occurs to you, in as great detail as possible, concerning the administration of criminal justice in Cleveland, its merits and defects. Please include your opinion as to the caliber of judges and prosecuting attorneys and defendants' attorneys in criminal cases and methods of trial."

Name	Time of service	Age at commencement of service	Date admitted to bar	Years admitted to bar at commencement of service
DEMOCRATIC				
Frank S. Day	Jan., 1912 to 1916	30	1907	4½
James G. Reyant	Jan., 1914, to Dec., 1916	34	1903	10½
Francis W. Poulson	Jan., 1914, to Dec., 1916	24	1910	3½
Samuel W. Silbert	Jan., 1914, to Dec., 1916	33	1907	6½
REPUBLICAN				
James L. Lind (chief)	Jan., 1916, to Dec., 1919 {	27	1912	3½
		29	1912	5½
Herman E. Kohen	Jan., 1916, to Jan., 1917	25	1914	1½
Edward Stanton	Jan., 1916, to Dec., 1919	32	1913	2½
Edward Stanton (chief)	Jan., 1920, to Dec., 1920	36	1913	6½
E. J. Russick	Jan., 1916, to	28	1913	3½
V. A. Marco	May, 1916, to Oct., 1916		1912	4
Fred A. Irvine	Oct., 1916, to Sept., 1917	25	1914	2
W. D. Cole	Sept., 1917, to Feb., 1918	31	1912	5
Nathan C. Beckerman	Dec., 1917, to Dec., 1919	31	1910	7½
Joseph Nuccio	Feb., 1918, to Sept., 1919	31	1917	½
John J. Sexton	Apr., 1918, to Dec., 1920	42	1915	2½
John Novario	Sept., 1919, to	24	1917	2
A. L. Kreisberg	Feb., 1920, to	26	1916	3½
Sam Rosenberg	Dec., 1919, to	26	1917	3
Oscar Bell (chief)	Jan., 1921, to	41	1913	7½
Michael L. Sammon	Jan., 1921, to	45	1919	1½

There were about 100 specific responses to that part of this question which related to the prosecutors, and all of these with only two exceptions declared these offices to be lacking in requisite ability. Neither the question nor the answers differentiated between municipal and county officers. General opinion was expressed that the men in the prosecutor's offices are chosen for political reasons, and many asserted that in such choices the community suffers from the practice of deliberately giving the large racial or national groups of the community, such as the Poles, other Slavs, Jews, Italians, and Irish, representation in the prosecutor's

offices. There can be no doubt there exists a lack of public confidence in the freedom of the office from political and other influences operating to bring fear or favor into the administration of the law.

In order to obtain an estimate which could not be considered as biased by partisan considerations, confidential opinions were obtained from a leading Democratic lawyer and a leading Republican lawyer, both of whom are active in their party organizations and personally acquainted with all the members of the prosecutor's office. The opinions of these two men were startlingly identical. Each pointed out the same one or at most two members of the office as able and the rest as not sufficiently experienced or capable for the work.

With the office and the Municipal Court conducted as at present, except for an occasional jury trial or argument in an appellate court, the prosecutors do not have, or at least do not take, the opportunity to demonstrate their ability either as trial lawyers or prosecuting attorneys. It can be fairly stated as an unquestionable fact that they have not aggressively attempted to improve and reform the administration of justice in Cleveland, but have permitted themselves to drift with the currents, political and otherwise, in which they found themselves. Everybody consulted considered present Chief Prosecutor Bell to be an honest man and an official with the best of intentions. But whether he has the executive talents and driving power necessary to steer the ship in such rapid and swirling waters still remains to be demonstrated.

The present salary scale of the office is as follows:

Chief prosecutor.....	\$4,000
First assistant.....	3,500
Second assistant.....	3,100
Three remaining assistants.....	2,900

CHAPTER V

OPERATION OF THE MUNICIPAL PROSECUTOR'S OFFICE

THE AFFIDAVIT

PROCEEDINGS looking to a criminal prosecution are instituted either by police or by the injured person. This injured person corresponds to the private prosecutor in the English criminal practice, and is in most cases the chief prosecuting witness if the case comes to a trial.

Proceedings instituted by the police officer are of two classes: those in which an arrest has been made prior to issuance of any affidavit or warrant, and those in which no arrest has been made at the time the police officer takes the matter up with the prosecutor. The former class consists generally of cases in which the police officer has caught the offender in the act of the offense, such as an arrest for violation of traffic regulations or the arrest of a drunken man for intoxication. Often when the information at hand does not point to a definite charge, but the police officer has reason to be suspicious of someone he sees lurking about or in following a clue, he suspects the arrested person of being a participant in or having knowledge concerning the commission of the crime under investigation, the suspected person is arrested by the police officer as a "suspicious person."

In all cases, whether instituted by the police or by others, policemen or prosecuting witnesses come to the prosecutor's office for an affidavit. This is the first pleading or formal beginning of the criminal prosecution. Where the case is brought into the office by a police officer, an affidavit is almost invariably issued if the facts recounted by the officer show the commission of a crime, and, with a few exceptions, the only question considered by the prosecutor is the nature of the charge to be made. In most cases there is little doubt about the nature of the charge, and the prosecutor's part at this stage of the case consists of hardly more than the mechanical process of picking out from one of the compartments of his desk the form containing the charge of the particular offense involved and filling it in with the name of the person charged and the date. In fact, even this slight mechanical detail is performed in a large number of

cases by the police officer himself, leaving the prosecutor nothing to do but to affix his name. In fact, by reason of the rush, confusion, and congestion in which the work is done, the prosecutor learns or hears the facts only when the policeman himself has some doubt as to the nature of the charge or the sufficiency of the facts and, on his own initiative, presents his doubt to the prosecutor.

SIFTING OF CASES

Where the moving party is the injured person or prosecuting witness, the case is not a major felony, and there are no reasons pressing for the immediate arrest of the accused, the prosecutor follows the practice of issuing a summons calling upon the defendant to appear at his office at a designated time. This summons has no standing in law. Because of the dignity of the form used and the fact that it is served by a uniformed policeman, it generally has the effect of bringing in the prospective defendant. The complaining party is told to return at the same time, and the accused is then subjected to an informal examination, the purpose of which is to ascertain whether the facts show an offense sufficiently serious to warrant prosecution, and also incidentally to get information about the case. The prosecutor, by this practice, holds a sort of informal court of conciliation wherein he soothes the anger of the prosecuting witness in matters which do not justify a prosecution. Thus a certain amount of "sifting out" of charges takes place before they become cases.

The present prosecutor estimates that more cases are thus disposed of without prosecution than are placed upon the court dockets. A former member of the office estimates that a case, whether dropped or prosecuted, receives, on the average, three minutes' attention in the office. The estimate is liberal.

Complainants frequently desire to use the prosecution or threat of prosecution for purposes of collecting a claim or debt and have little interest in criminal proceedings except as it may serve this purpose. A danger arises, therefore, that in this preliminary and unofficial court of conciliation the prosecutor will permit himself to be used to further this purpose, and even a danger that, through inadvertence or favoritism, he will permit himself to use his position to aid in the collection of doubtful or trumped-up claims.¹

¹ An actual case occurred in 1919 which illustrates this evil: One Knox (the names used are fictitious) was an expressman. One day in July, 1919, a man and a woman came to his place of business and left an order with his colored helper to

The extent of this evil is difficult to discover. The present chief prosecutor, feeling that some step toward decreasing the practice was advisable, ordered that these office summons be personally signed in longhand by the assistants issuing them, and not, as theretofore, by means of a stamp. Reliance must, however, be placed upon the caliber and character of the prosecutors themselves as well as the office record or reporting system. Some preliminary sifting out of the cases is necessary, and it would be unwise to issue an affidavit in every case in which one is sought and thereby add to the already excessive number of cases.

Resuming the description of the work of the prosecutor in the preparation of affidavits:

When he fails to allay the prosecuting spirit of the prosecuting witness and considers that there is sufficient proof of an offense, he issues the affidavit. It is in this class of cases that the prosecutor actually obtains some information about the case. Generally speaking, however, there is no particular book, paper, or file on which he puts down what he has learned. There is no system whereby he transmits this information to the trial prosecutor—that is, to the one who will

move a trunk from a given address to another given address. The next day they again dropped in and changed the destination address. The helper called for the trunk, found the lock broken, both straps broken, and one strap tied with a little cotton string. The trunk was successively taken to the designated destinations, at both of which it was refused, and then returned to Knox's premises, to be kept there until the owner might call for it and claim it. About two weeks later the woman who had left the order originally came to claim the trunk. She acknowledged that the lock and straps had been broken at the time the order was originally given. In order to identify her as the owner, Knox asked her a number of questions concerning the contents of the trunk, which she seemed to answer correctly. On examining the contents herself, she exclaimed that two shirt-waists and two pillow-tops were missing, and on being asked the value of the missing articles said, "\$75." She denied that she had ever given Knox or his helper orders to take her trunk. The next event was a telephone call to Knox from an attorney, Henry Frith, who in a very bulldozing and insulting manner ordered Knox to find and surrender the missing articles. Knox, of course, stated he knew nothing about them. Suit was thereupon brought against him in the Municipal Court for \$314. Then, late in November, over three months after the woman's alleged discovery that there were articles missing from the trunk, a police officer left a summons ordering Knox to call at the prosecutor's office the following day. In the room of one of the assistant prosecutors to whom he was directed, and whose name he did not know, he found this assistant prosecutor, the woman, and Attorney Frith. He was informed that unless he settled immediately he would be arrested. Refusing to pay anything, he was arrested on the charge of receiving stolen property. When the trials were held, both the civil and criminal cases were immediately dismissed, for there was not an iota of evidence against Knox.

try the case. The information ceases to function at this point and, in fact, can hardly be called information for trial, since it is rather scanty at best and it does not reach the trial prosecutor. Practically speaking, therefore, the trial prosecutor has no information about the cases which he tries and has made no preparation for them, and we have seen the negative part which he plays in the actual trial. He may act as a starter for the police or other prosecuting witnesses, but he has no idea of what they will say.

COUNTY PROSECUTOR DOES NOT PARTICIPATE IN EARLY STAGES OF CASE

A most important fact to note at this point is that the county prosecutor's office plays no part either in the preparation of the affidavit, the determination whether there shall be a charge made or what the charge shall be, the ascertainment of the facts upon which the affidavit is based, or the preparation for trial at the preliminary hearing. Though a large percentage of the cases are State cases, there is no system of coöperation or coördination whereby the county prosecutor, who may have the charge of and responsibility for the later and final stages of the case, gets in touch with it in time to mold its preparation. Except in sensational cases which are exploited by the newspapers at early stages, there is no coördination between the police department and the county prosecutor. Except as he reads about the cases in the newspapers, he never hears of them until they have been sent by the Municipal Court to the grand jury.

There seems to be no lack of willingness on the part of the police department to coöperate with the municipal prosecutor's office, and when the prosecutor requests service from the police department in the nature of preparation for the trial, such as the detection of facts, the ascertainment of names of witnesses, and the like, such assistance is promptly forthcoming. Such assistance is seldom requested, however, except in the comparatively few cases in which the public is aroused or the police officer who has made the arrest or is investigating the case has sufficient imagination and energy to realize the problems involved and to bring them to the attention of the prosecutor.

The up-to-dateness, adequacy, and expertness of the methods of criminal investigation in use in Cleveland are matters which fall more appropriately within the police division of this survey, but there is nothing to indicate that the prosecutors are in any degree equipped by education, experience, or interest to lead and educate the police department in this respect.

Except in its activity as an informal court of conciliation, the part

played by the municipal prosecutor's office prior to trial is largely the preparation of the affidavits, and, as above stated, except in a relatively small percentage of the cases, this preparation is a rather mechanical affair. Of the other cases, that is, those in which the preparation of the affidavit has involved the exercise of judgment and a knowledge of law, there is no practical way of ascertaining, with a fair degree of statistical accuracy, the percentage in which the prosecutor has exercised this judgment and discretion with efficiency. The present county prosecutor, when asked to explain the considerable percentage of cases "no-billed" and "nolled" by him, charged the municipal prosecutor's office with carelessness in the preparation of the affidavits. This resulted, he said, in a large number of inaccurate charges; that is, of affidavits in which the offense charged did not correspond to the provable facts.

Taking all the cases into account, therefore, while the affidavit is correct in a great percentage of all cases, there are indications that, in the small percentage of cases in which special skill is required, avoidable mistakes occur. Naturally, the percentage of these errors relative to total number of cases is less significant and important than is the class of cases in which these errors occur; and a few miscarriages of justice by reason of an error in the charge, in cases of importance or cases which have attracted public interest, is very damaging to the prestige of the administration of criminal justice and, therefore, to its effectiveness as a deterrent of crime.

CASES IN APPELLATE COURTS

The municipal prosecutor's duties also include the presentation of the side of the city or State in the hearings by the appellate courts of proceedings to reverse the judgments of the Municipal Court in criminal cases. Thorough preparation of this work is of prime importance. It is in these cases that an important part of the criminal law is interpreted and established. Furthermore, professional criminals, who know the ropes, are more apt than other types of defendants to carry cases up, and the effectiveness of law enforcement is especially important in their cases. And, as defendants with large financial means are more able to appeal cases than those of lesser means, it is highly important that this advantage be offset and minimized to the greatest extent consonant with justice.

A study was made of the relative number of cases in the Court of Appeals in which the municipal prosecutor filed or failed to file briefs, the study covering a period of two years—1919 and 1920. The results are shown in Table 6. This record shows that the prosecutor filed a

brief in only two of the 43 completed cases. It is noteworthy that he had filed no brief in any of the 13 cases in which the judgment of conviction was reversed, that is, in which he lost the case before the appellate court. In judging this record, the fact should be kept in mind that the prosecutor has had no stenographic assistance.

TABLE 6.—OUTCOME OF CASES CARRIED TO THE COURT OF APPEALS, 1919 AND 1920; CLASSIFIED ACCORDING TO THE FILING OF BRIEFS

Final disposition of case by Court of Appeals	No brief filed by either side	Brief by plaintiff-in-error only	Brief by both plaintiff-in-error and prosecutor	Total
Judgment affirmed	1	17	2	20
Judgment reversed	3	10	..	13
Dismissed at costs of plaintiff-in-error	1	1	..	2
Dismissed for want of preparation	7	1	..	8
Totals completed cases	12	29	2	43
CASES NOT FINALLY DISPOSED OF:				
Prosecutor in default of brief—				
Four months or more	..	1	..	1
Three months or more	..	1	..	1
Two and a half months or more	..	2	..	2
Two months or more	..	1	..	1
One month or more	..	1	..	1
Plaintiff-in-error in default of brief—				
Four and a half months	1	..	..	1
Two and a half months	1	..	..	1
Totals incomplete cases	2	6	..	8
Total all cases	..	..	..	51

STATISTICS OF RESULTS OF CASES

These are the methods of preparation and trial. What is the quality of the product, so to speak—what are the results? The mortality tables (Tables 1, 2, and 3) give the percentages of the types of dispositions of the cases—"nolles," dismissals, pleas of guilt, convictions upon trial, and so on. As stated in Chapter II, these tables have been made from every tenth case, being a tabulation of the results of one-tenth of the cases. Tables 7, 8, and 9 give these results or dispositions in accordance with a general classification of offenses.

TABLE 7.—CITY CASES, MUNICIPAL COURT, 1919-20; DISPOSITION OF CASES CLASSIFIED BY CHARGES

Charge	Verdicts of guilty				No papers	Nolle prossed	Other disposition	Discharged	Total
	Plea unknown	Plea of guilty	Plea of not guilty	Plea not guilty changed to guilty					
Traffic law violation	6	345	161	11	10	25	2	48	608
Disorderly conduct	1	96	126	1	1	7	4	59	295
Suspicious person	1	22	126	5	10	72	3	55	294
Intoxication	..	180	58	8	..	11	1	18	276
Offenses against chastity	..	85	74	10	3	16	1	28	217
Gambling	1	8	23	..	..	4	..	18	54
Offenses against public health	..	9	8	..	1	2	..	3	23
Offenses against public safety	..	14	3	1	1	..	..	1	20
Offenses against property	..	2	9	..	1	3	..	..	15
Miscellaneous	..	16	10	..	..	1	1	2	30
Total	9	777	598	36	27	141	12	232	1,832

TABLE 8.—STATE CASES, MUNICIPAL COURT, 1919-20; DISPOSITION OF CASES CLASSIFIED BY CHARGES

Charge	Found guilty				No papers	Nolle prossed	Discharged want of prosecution	Other disposition	Discharged	Total
	Plea unknown	Plea of guilty	Plea of not guilty	Plea not guilty changed to guilty						
Offenses against public safety	9	310	67	16	13	17	6	10	23	471
Offenses against the person	..	42	170	1	..	15	58	7	109	402
Gambling	7	79	124	11	..	4	..	..	58	283
Offenses against property	3	99	91	4	2	15	14	2	32	262
Violation of liquor laws	5	125	29	20	3	12	..	5	30	229
Offenses against chastity	3	55	37	6	..	7	..	2	31	141
Offenses against minors	..	6	23	..	..	6	4	..	7	46
Offenses against public justice	6	11	10	..	..	1	..	1	9	38
Frauds	..	8	9	1	..	2	2	..	4	26
Offenses against public health	..	4	5	1	..	4	..	1	1	16
Miscellaneous	..	12	12	1	1	6	3	..	4	39
Total	33	751	577	61	19	89	87	28	308	1,953

The meaning of the terms used are too well known to require much explanation. "Discharged" are those in which, after trial, the court decided for the defendant. The Municipal Court has no jurisdiction to impose judgment in a felony case, even if the defendant enters a plea of guilty; so the "bound-over cases" in Table 9 include those in which there was a plea of guilty. This table shows that only 87 out of 683 cases resulted in the discharge of the defendant; and that, out of 555 cases which were heard, 468 were bound over to the grand jury, indicating, in the light of the results of the cases in the grand jury and county court, either that the mill of the Municipal Court does not perform its sifting functions efficiently, or that the cases are not well prepared.

TABLE 9.—STATE EXAMINATIONS, MUNICIPAL COURT, 1919-20; DISPOSITION OF CASES CLASSIFIED BY CHARGES

Charge	Bound over	Discharged	Nolle prossed	Guilty of lesser offense	Dismissed	Other disposition	Total
Offenses against persons	181	37	18	13	3	8	260
Offenses against property	144	24	19	27	4	1	219
Offenses against peace	82	8	2	..	..	1	93
Offenses against public safety	27	9	5	1	1	..	43
Forgery offenses	11	2	6	..	2	1	22
Offenses against chastity	11	..	2	1	2	..	16
Frauds	6	1	1	..	1	..	9
Offenses against public justice	3	1	4	..	..	..	8
Minors	1	3	3	..	1	..	8
Miscellaneous	2	2	..	..	..	1	5
Total	468	87	60	42	14	12	683

DISPOSITIONS WITHOUT TRIAL

Attention should now be given the practice in those types of disposition whereby, without trial, cases are dropped or dismissed by or at the instance of the prosecutor, or he and the court accept a plea of guilt of a lesser offense than that charged. Tables 1, 2, and 3 show 1.47 per cent. of the city cases, 0.97 per cent. of state misdemeanors, and 1.78 per cent. of state examinations are "no papered," and 7.70 per cent., 4.57 per cent., and 7.95 per cent., respectively, are "nolled." In city and state misdemeanor cases there are, practically speaking, no degrees of offenses, and nothing to be gained by a plea of guilt of a lesser or different offense. If the charge be a felony, however, acceptance of plea of guilt of a lesser offense gives the Municipal Court jurisdiction to impose a fine or short imprisonment in a workhouse or other milder place of detention as compared with more lengthy confinement in the penitentiary if the defendant be ultimately found guilty of the felony.

As shown by Table 3, these lesser pleas were accepted in 1.15 per cent. of the state felony cases. A study of the time which elapses between arrest and the "nolle" disclosed that in city cases there was an average of 12.5 days, and in state misdemeanors, of 11.3 days.

Numerous situations arise which justify the dropping of cases without trial, and there is nothing illegitimate or necessarily suspicious about the "nolle" of a case. Nor are these percentages on their face necessarily excessive. But this power of the prosecutor is so dangerous, so fraught with possibilities of carelessness or corruption, that, both for the sake of the administration of justice and for the protection of the prosecutor himself against unjust suspicions, it is of the utmost importance that its exercise be surrounded with all practical safeguards.

"NO PAPERS" OR "NO-PAPERING"

The expression "no papers" needs explanation. When an arrest is made prior to issuance of an affidavit, the case goes upon the docket and is therefore called in court. If the prosecutor decides at that early stage that the provable facts do not justify bringing any charge, no affidavit is issued, and, when the case is called in court, he responds that there are "no papers," and that is the end of the case. In "nolled" cases, on the other hand, the affidavit has been issued—that is, a charge has been made, and the "nolle" represents the determination on the part of the prosecution that, though the situation may have justified the making of a charge and filing of an affidavit, the absence of adequate proof or some other situation makes it just or advisable to drop the case at that point. The word "nolle" is an abbreviation of *nolle prosequi*, meaning "I am unwilling to prosecute."

This "no-papering" procedure has no statutory basis. No such procedure is mentioned in the statutes or recognized in common law criminal procedure. Consequently the law does not throw safeguards around its exercise, and, as actually practised in the Municipal Court, the prosecutor simply announces "no papers" without stating any reason, and the court hears nothing and does nothing except note "no papers" on the docket. An experienced official connected with the Municipal Court, when asked to explain the sort of situation in which "no-papering" was applied, answered: "If Burns is arrested and when the officer comes down here he finds that somebody knows Burns and that he has lived around Cleveland for a while, is a pretty good fellow, and will probably never be in trouble again, we simply decide never to go ahead with the case, and the case is marked 'no papers.'"

In almost all "no-papered" cases it is apparent that the trial prosecu-

tor has no information as to the reasons for dropping the case, and simply accepts the word of the police officer. As a matter of fact, therefore, somebody in the police department, and not the court or prosecutor, makes the decision. Neither in the records or papers of the court nor in the files of the prosecutor's office is any statement or notation whatever made as to the reasons for "no-papering" the case. The reason, if ascertainable at all, is to be found only in the memory either of the police officer who gave the tip to the trial prosecutor to "no paper" the case, or in the memory of the office prosecutor who gave the tip to the police officer to give the tip in turn to the trial prosecutor.

NOLLES

The statutes of Ohio contain no provision regulating practice in entering of nolles in the Municipal Court. Section 2919 of the General Code of Ohio prohibits the county prosecutor from entering a nolle without leave of court and without good cause shown in open court. There is no corresponding provision for the municipal prosecutor or Municipal Court. Naturally, the court can exercise some control, but even where the law prescribes consent of the court, the prosecutor is most instrumental in determining the question, for the court is necessarily dependent upon the prosecutor's statement of facts upon which a nolle is based. And in the hurly-burly of the Municipal Court nolles requested or suggested by the prosecutor are granted as a matter of course.

The nolle sometimes takes place during the trial of the case, when the developments at the trial suggest to the prosecutor that the provable facts are not sufficient, and sometimes the judge himself suggests a nolle. No record or notation is made, however, as to the reasons for the nolle nor at whose instance it was allowed.

In other cases the nolle is announced by the trial prosecutor just as the case is called. If he knows of the reasons, he seldom states them, and generally he acts upon word from the police officer in the case or from one of the office prosecutors. It is quite possible that he might have reasons of his own of which no one else knows and which are communicated to no one else. Whether the determination to "nolle" the case has its birth with the trial prosecutor, police officer, or an office prosecutor, there is no memorandum of such reasons made, with the exception that in cases of death or personal injury arising out of traffic violations there is some sort of a vague requirement that the reason for dropping the case be noted on the so-called "yellow card" in the police department. As we shall soon see, the rule is indefinite and its observance irregular.

There is no regulation whereby permission to "nolle" the case is required from the chief prosecutor. For a short time after he came into office present Prosecutor Bell considered the enactment of such a regulation, but decided that he did not have the necessary clerical assistance.

In addition to the general statistics for 1919 and 1920, an intensive study was made of cases "no-papered" and "nolled" between January 17 to 31, 1921. These were the two weeks which preceded the commencement of this survey, and sufficiently recent to test the practice. Following is a list of these cases:

"NO PAPERS"

CITY CASES

<i>No.</i>	<i>Charge</i>
44735	Traffic ordinance
44872 (two defendants)	Suspicious person

STATE MISDEMEANORS

70863	Obtaining goods by false pretenses
71012	Obtaining money by false pretenses
71261	Liquor law
71283 (two charges)	Petit larceny
71321 (two defendants)	Liquor law

STATE FELONIES

70852	Fugitive from justice
71297	Manlaughter

NOLLES

CITY CASES

<i>No.</i>	<i>Charge</i>
44879	Traffic ordinance
44866	Traffic ordinance
44660 (two defendants)	Traffic ordinance
44667	Suspicious person
44697 (three defendants)	Suspicious person
44706	Bread ordinance
44725	Suspicious person
44754	Traffic ordinance
44780 (four defendants)	Suspicious person
44796 (two defendants)	Suspicious person
44815	False police report
44822	Traffic ordinance
44829	Disorderly conduct
44831	Suspicious person
44871	Suspicious person

STATE MISDEMEANORS

70877	Conversion
70900	Liquor law
70970	Assault and battery
70985½	Liquor law
70989	Liquor law
71021	Assault and battery
71034	Illegally practising medicine
71039	Exhibiting scheme of chance

NOLLES—STATE MISDEMEANORS—(Continued)

No.	Charge
71091	Liquor law
71212	Conversion
71245	Assault and battery
71229	Liquor law
71247	Petit larceny
71249	Conversion
71254	Adultery
71255	Fornication
71266	Auto law

STATE FELONIES

70853	Fugitive from justice
70859	Forgery
70861	Operating motor vehicle without owner's consent
71235 (three defendants)	Robbery
71303	Operating motor vehicle, etc.
70911	Obtaining goods under false pretenses
70912	Issuing check to defraud
70917	Carrying concealed weapons
70947	Fugitive from justice
70959	Issuing check to defraud
71101	Issuing check to defraud
71279	Carrying concealed weapons

The prosecutor and his assistants were asked to give the reasons for dropping these cases. In practically none of them were they able to remember the reason. This was quite natural in view of the enormous number of cases handled. In none of them, however, did they go to any record for the answer. They described, in an abstract manner, various types of recurring situations which they treat as justifying the entering of a nolle, but did not concretely, by means of their recollection or reference to a record, bring any of these cases within these types. They did state that in manslaughter, personal injury, or property damage cases arising out of traffic accidents, reasons were noted upon the yellow sheet of the case in the police department. This trail was then followed:

The policeman making the arrest, making the investigation, or taking the complaint, if the case starts with a complaint to the police department, makes out a report with an original and three carbon copies. The original is white, two of the carbons are pink, and one carbon is yellow. The white copy goes to the record room at the central station. One of the pink copies is kept as a permanent record in the precinct. The other pink copy goes either to the city law department or to the detective bureau or to any other department which might be particularly interested in the case. The yellow copy is kept at the precinct and posted on a board. These yellow sheets include all sorts of complaints and reports, including petit larceny, theft of automobiles, unlocked doors, etc.

If the case be a traffic case, then, when it comes on for hearing in the

Municipal Court, the officer usually takes this yellow sheet with him. This action is, however, optional and not uniform. In other classes of cases the yellow sheet is seldom taken. When the officer does take the sheet, the prosecutor may make some notation on it as to the disposition of the case, but there is no regular practice of that kind. The sheet is brought back to the precinct station and posted with the others there on file. These yellow sheets are apparently kept so as to allow the reporters or anybody else who is interested easy access to the day's grist of accidents, crimes, etc. Every month or two most of these yellow sheets are thrown away, so that they do not in any sense constitute a record of the police department.

We examined the complete files of the yellow sheets in the second and fourth precincts. In the second precinct some 600 to 800 of these reports were examined, running from March 12 to June 12, 1921. Only two of them contained notations by any prosecutor. These notations were as follows:

6/7 "No papers. No apparent violation. M. L. Samman, Assistant Prosecutor."
(This was a case involving injury of a person from an automobile accident.)

"Insufficient evidence. S. Rosenberg, Prosecutor. 5/17/21." (This was a case involving damage to property arising from an automobile accident.)

At the fourth precinct from 200 to 300 of these sheets were examined, covering the period from May 25 to June 13, 1921. There were only three entries of any sort by a prosecutor—all three automobile cases. These entries were as follows:

"Will send out notice to Rawlin if Chizek wants it. Prosecutor Novario."
(Chizek was the complaining witness.)

"No papers. Prosecutor Novario."

"Papers issued for careless driving and lights. M. L. Samman, Assistant Prosecutor."

These few cases with prosecutor's notations did not constitute all the traffic accident cases. The pink sheets, which are a part of the permanent records in the precinct office, never go to the prosecutor. The accident files in both Precincts 2 and 4, covering about two months, were examined without disclosing a single notation by a prosecutor. These yellow sheets to which the prosecutor had referred cannot serve as the slightest pretense for a record system. The prosecutor sees them in a very restricted class of cases, and, even in that class, sees them erratically and only when the police officer happens to bring one along. They are at best temporary memoranda in the police stations.

The following cases were selected from the foregoing list of two weeks' "no papers" and nolle, and the police station records or sheets, to which the prosecutor had referred, were examined, with the following results:

First Precinct

- No. 70861 William Proskner. Charge, operating motor vehicle without consent of owner. Disposition, nolle. The police record room had no record whatever of this case. The private files in Chief of Police Smith's office, however, showed that the case was taken directly to the grand jury, the defendant indicted, and later found guilty and sentenced to serve one to fifteen years by Judge Powell. There was no notation anywhere as to the reason for the nolle in the Municipal Court, and it was only an accident that, while searching Chief Smith's office on entirely different matters, this notation in this case happened to be seen.
- No. 70915 Ben Weiger. Operating motor vehicle. Dismissed for want of prosecution. There were no records on this case.
- No. 71194 Rafel Majeia. Grand larceny. Discharged. No record.
- No. 71195 Marie Moore. Grand larceny. Discharged. No record.

Second Precinct

- No. 71297 Henry Pack. Manslaughter. "No-papered." The defendant, while operating an auto, struck and killed two persons. On the record at the central office and on the pink sheet in the precinct appeared the following entry:

"Presented the case to Prosecutor Russick, who said there was not sufficient evidence to issue a warrant for the driver, who was arrested, charged with manslaughter."

There were no notations on the record either at the central office or the precinct made by the prosecutor, and the yellow sheet of this case had either been destroyed or mislaid before the time of the examination.

- Arthur Brooks. "No-papered." Arthur Brooks killed Chapman Whippel while driving an auto at East 18th Street and Payne Avenue, N.E. In the report in the record room at the central station and on the pink sheet in the precinct station appears the following: "I presented the facts and statements of the witnesses in the above case to Prosecutor Novario, who issued 'no papers' as there was no violation of city law or State ordinances." The yellow sheet on this case had either been lost or destroyed and was not available at the precinct, and there was no notation anywhere by the prosecutor as to why the case had been "no-papered."

Fourth Precinct

- No. 71062 Joseph Hopkins, Edward Mackin. Robbery. No record.
- No. 71235 Harvey Hubner. Robbery. *Nolle pros.* No record.
- Robert M. Harris. Robert M. Harris was driving 30 or 35 miles per hour, skidded, and ran up on to sidewalk and hit three children, killing two of them, and was arrested, charged with manslaughter. There was no entry showing disposition of this case.

Sam Ettinger. Sam Ettinger, on April 4, was going east on Superior Avenue, N.E., about 50 or 60 miles per hour, struck another car, and his car turned three complete somersaults in the air and stopped about 100 feet further down the street and killed two of the passengers in Ettinger's machine. The records at the central office and precinct showed no disposition of this case. As a matter of fact, Ettinger was discharged by the court, as shown by the memorandum of proceedings in Municipal Court on April 22.

ACCEPTANCE OF PLEAS OF LESSER OFFENSE

Section 4583 of the General Code expressly permits the Municipal Court, in a felony case, when the court is of the opinion that the offense is only a misdemeanor, to accept a plea of guilty of the misdemeanor or order the prosecutor to file an information for the misdemeanor and discharge the felony case. The statute does not specify any safeguards. Present practice of the prosecutor's office appears to be as loose and haphazard, without record and without regulation and without concentration of responsibility, as in the case of nolles.¹

¹ The case of Charles McCormack furnishes an illustration of the possibilities in existing methods and practices. McCormack was arrested on the public square of Cleveland on the night of Saturday, April 23, 1921, for pocketpicking on April 21. On the night of the arrest, about midnight, Assistant Municipal Prosecutor Kreisberg came to Lieutenant C.'s desk at the central police station with two other men for the purpose of inquiring about getting a bond for McCormack. McCormack's attorney was X, closely related to a well-known, influential Republican "politician."

The police blotter contains the words "Pocketpicking" and "Picked the pocket of William Smith." In a different ink, lines were drawn through these words, and, in both different ink and handwriting, there was substituted, "Petit larceny" and "stole \$33." The affidavit charges petit larceny; the bail bond charges pocketpicking. The former is a misdemeanor, the latter a felony. When the case was called before Judge A. on Monday morning, McCormack plead guilty and was fined \$50 and sentenced to thirty days. A motion for mitigation of sentence was overruled. The records contain no statement of reasons for or justification of this reduction. The case appeared as No. 25 on the prosecutor's docket for April 25, and appeared as No. 24 on the judge's docket in Judge A.'s room. The docket in Room 1 was written in green ink, and in the column for entering the charge appeared the charge "pocketpicking," over which, however, in pencil, was written "petit larceny." On the docket in Judge A.'s room, in which the case was heard and the entire docket of which was written in pencil, appears the word "pocketpicking" in pencil of the same color as the rest of the docket, and over this in red pencil, "petit larceny." Petit larceny does not bear to pocketpicking the relation of lesser degree of the same type of offense, as, for instance, manslaughter is a lesser degree of homicide than murder, or petit larceny a lesser degree of the same offense as grand larceny.

The following is McCormack's police record, according to the records in the Bureau of Criminal Identification of the Cleveland police department. Lieutenant

SUSPENSION OF SENTENCES

The mortality tables (Tables 1, 2, and 3) give the percentages of cases in which sentences were wholly suspended or reduced or carried out. Tables 10, 11, 12, and 13 contain a more detailed analysis of the suspensions of sentences in the Municipal Court, classified both as to nature of charge and as to severity of the original sentence.

The high percentage of mitigations and suspensions, particularly in certain classes of cases, indicates an abuse or mistaken practice somewhere. The question arises as to the part played by the prosecutor. Frequently the court suspends the sentence immediately after rendering judgment at the end of the trial, and, therefore, in the presence of the prosecutor. In other cases the suspension of sentence takes place at an unannounced and unscheduled time, frequently without the presence of

Koestle, in charge of the bureau, states that Charles and Nicholas McCormack are the same person.

Record of Nicholas McCormack, alias William McKay, alias Harry Wilson, alias Frank Martin, alias Thomas Ward. Photo No. 17249, Cleveland, O., gallery.

As William McKay arrested at Elmira, N. Y., June 6, 1907. Charge, suspicious person. "P.P." Given hours to leave city.

As Nicholas McCormack, No. 788, arrested at Jersey City, N. J., November 10, 1908. Charge, pocketpicking. January 18, 1909, discharged by trial, and was arrested in court and taken to Brooklyn, N. Y., by officers from that city.

As Harry Wilson, No. 714, arrested at Syracuse, N. Y., June 9, 1910. Charge, disorderly person. "P.P." June 11, 1910, paroled by Judge Ryan.

As Frank Martin, No. 4442, arrested at Kansas City, Mo., November 24, 1910. Charge, "P.P." November 26, 1910, fined \$25. Paid.

As Thomas Ward, No. 6665, arrested at St. Louis, Mo., August 8, 1912. Charge, pocketpicking. Picking pockets on street cars with George Scott, No. 6664, and August alias Gus Murphy, No. 666, stole a pocketbook containing \$80, October 30, 1912. Case of Thomas Ward, convicted of grand larceny, and sentenced to two years, Jefferson City, Mo., penitentiary. Appealed to Supreme Court and released on \$3000 bond.

As Thomas Ward, No. 5601, arrested at Detroit, Mich., August 4, 1913. Charge, suspicious person, "P.P."

As Frank Martin, No. 34367, arrested at Philadelphia, Pa., December 30, 1916. Charge, inmate of gambling house.

As Nicholas McCormack, No. 4279, arrested at Pittsburgh, Pa., December 7, 1917. Charge, "P.P." December 8, 1917, fined \$100 or thirty days in workhouse. Paid.

As Nicholas McCormack, No. 16177, arrested at Los Angeles, Cal., May 1, 1918. Charge, suspected pickpocket.

As Nicholas McCormack, No. 17249, arrested at Cleveland, O., June 17, 1918. Charge, suspicious person. Suspected pickpocket. Taken from railway train at Union Depot, June 17, 1918. June 17, 1918, released to leave city.

or consultation with the prosecutor. Even when he is present the prosecutor rarely protests or participates in any way in deliberation upon the question of suspension. Representing as he does the community, and being that representative presumably most familiar with the facts concerning both the offense and the offender, it would seem to be the proper function of the prosecutor to advance the considerations favoring or contradicting the suspensions. Sometimes he does not perform this function because the court has not given him the opportunity. There is, however, no indication that he has protested this exclusion or made any vigorous attempt to do his part.

TABLE 10.—STATE CASES CLASSIFIED BY CHARGES AND BY DISPOSITIONS AND DEGREE OF SUSPENSION OF SENTENCES

Charge	Dispositions of cases					Results of sentences			
	No sentence	Fine	Imprisonment	Fine and imprisonment	Total cases	Sentence wholly suspended	Sentence partly suspended	Sentence executed	Total sentences
Assault and battery	184	114	26	71	395	72	38	101	211
Auto law violations	43	211	9	28	291	20	92	136	248
Gambling	63	217	1	2	283	115	41	64	220
Liquor law violations	51	173	..	..	224	8	38	127	173
Against public safety	31	148	..	1	180	17	20	112	149
Petit larceny	34	51	26	68	179	44	20	81	145
Against chastity	42	22	19	58	141	47	15	37	99
Against property	32	27	7	17	83	9	14	28	51
Against minors	17	3	6	20	46	24	1	4	29
Against public justice	11	14	8	5	38	..	3	24	27
Frauds	8	7	2	9	26	8	3	7	18
Against public health	7	8	..	1	16	1	3	5	9
Against person	5	1	1	..	7	1	1	..	2
Desecration of Sabbath	1	4	..	..	5	1	..	3	4
Intoxication	2	3	..	..	5	..	..	3	3
Against public peace	3	1	..	..	4	..	..	1	1
Misconduct in public office	..	..	..	2	2	..	..	2	2
Against State	1	..	..	..	1	..	..	..	..
Forgery	1	..	..	..	1	..	..	..	..
Miscellaneous	9	15	..	2	26	5	4	8	17
Total	545	1,019	105	284	1,953	372	293	743	1,408

The whole practice regarding suspension of sentences is excessively loose. Much of it is of doubtful validity. The statutes provide for suspension of sentence pending error proceedings in upper courts. The statutes also provide for suspension of sentence of imprisonment with a specified period of probation, the final carrying out or discharge of the sentence to be dependent upon the results of the probation period. Statutes furthermore provide for suspension of a sentence or of a fine for a specified period during which the defendant is given opportunity to pay the fine. In practice these limitations are by no means observed.

TABLE 11.—CITY CASES CLASSIFIED BY CHARGES AND BY DISPOSITIONS AND DEGREE OF SUSPENSION OF SENTENCES

Charge	Dispositions of cases					Results of sentences			
	No sentence	Fine	Imprisonment	Fine and imprisonment	Total cases	Sentence wholly suspended	Sentence partly suspended	Sentence executed	Total sentences
Violation traffic law	88	510	1	9	608	69	164	287	520
Disorderly conduct	71	93	68	63	295	92	12	120	224
Suspicious person	142	7	39	106	294	61	12	79	152
Intoxication	31	165	43	37	276	66	27	152	245
Offenses against chastity	48	75	40	54	217	68	28	73	169
Gambling	22	32	..	..	54	13	4	15	32
Offenses against public health	7	14	1	1	23	3	5	8	16
Offenses against public safety	2	18	..	..	20	3	1	14	18
Offenses against property	4	4	..	7	15	6	1	4	11
Miscellaneous	5	24	1	..	30	5	4	16	25
Total	420	942	193	277	1,832	386	258	768	1,412

Sentences of imprisonment are suspended without probation for a definite period, and sentences of fines are suspended without a condition concerning the payment of a fine. Whatever the duties of the judges, it is unquestionably the duty of the prosecutor to watch the execution of the sentences so as to call to the attention of the court, or the appropriate official, instances in which the law is not being obeyed. As attorney for the public he can hardly conceive his work as completed without some attempt to ascertain whether the judgments he obtains correspond to the law and are carried out.

TABLE 12.—SENTENCES CLASSIFIED BY TYPES AND BY DEGREE OF SUSPENSION, STATE CASES

Disposition	Fines	Imprisonment	Fines and imprisonment	Total
Wholly suspended	184	80	122	386
Partly suspended	209	10	39	258
Executed	549	103	116	768
Total	942	193	277	1,412

The suspension of a sentence is often justified as a sword hanging over the defendant. The old sentence is made a hostage for future good conduct. There is obvious merit in this. The trouble is that the theory is

not carried out. With rare exception the suspended sentence is promptly forgotten by everybody, and if the defendant comes back into the court upon a new or even the same charge, seldom if ever is the old sentence remembered.

TABLE 13.—SENTENCES CLASSIFIED BY TYPES AND BY DEGREE OF SUSPENSION, CITY CASES

Disposition	Fines	Imprisonment	Fine and imprisonment	Total
Wholly suspended	213	41	118	372
Partly suspended	207	17	69	293
Executed	599	47	97	743
Total	1,019	105	284	1,408

MITIGATION OF SENTENCES

Mitigation of sentences is made upon motion regularly set for hearing. This gives the prosecutor full notice of the time when the motion will be considered; he is generally present in the court and has opportunity to advance arguments in favor of or against the mitigation. As with total suspensions, however, in practice he rarely takes any but a passive or negative part.

Section 13696 of the General Code of Ohio provides:

"TESTIMONY AFTER VERDICT OR CONFESSION, TO MITIGATE PENALTY.—When a person is convicted of an offense, punishable, either in whole or in part, by a fine, the court, by motion, may *hear testimony* in mitigation of the sentence. The court shall hear such testimony at the term at which the motion is made, or may continue the case to the next term or like terms as the case might have been continued before verdict or confession. The prosecuting attorney shall attend such proceedings on behalf of the State, and offer testimony necessary to give the court a true understanding of such case." (R. S. No. 7320.)

This careful treatment of motions in mitigation of sentence, including presentation of evidence by the prosecutor, is seldom observed. In practice the prosecutor conceives that his duty has been done when the trial of the case is finished and sentence has been pronounced. One of the judges of the Municipal Court described with considerable detail the procedure followed by him. The description made it apparent that cases before him receive more trial after sentence than before; that the facts are more carefully looked into after trial and verdict than before; that, in short, with very slight and casual information concerning the facts,

judgment is rendered and sentence imposed, and then a more careful investigation of facts is made in passing upon a request for mitigation or suspension of the sentence. There is much to indicate that the practice is not limited to this judge. This shows a tendency to view the problem as one of treatment of the defendant as an individual rather than one of law enforcement. Such mingling of distinct purposes or theories regarding crime and the criminal intensify the difficulties of the prosecutor. His position is today solely that of a law enforcement officer, and his professional training is a training for law enforcement. The law which he enforces, however, applies to the execution of the sentence as well as to the commission of the crime, and this portion of his duties is almost completely neglected.

THE BAIL BOND

Immediately upon his arrest the defendant is confined in the police station or city jail, unless he gives bond to secure his appearance at the hearing of the case, generally set for the following morning. In all cases except felonies the amount of this first bond is fixed by the clerk of the court. In felony cases the amount of the bond is fixed by one of the judges of the court, who, if not sitting at the time, is reached over the telephone. There is no regular rule or practice for consultation with the prosecutor. The judge may ask the prosecutor's advice, or the prosecutor may himself initiate a conference with the judge.

If, on the hearing, the defendant is convicted and sentenced and desires to carry the case to an appellate court, or if, in a felony case, he is bound over to the grand jury, he is required to give a second bond to secure the prompt filing of his case in the upper court or his appearance when arraigned, the amount of which is fixed by a judge of the court. Bonds to be given thereafter will be fixed by the Common Pleas or other higher court. The sufficiency of the surety is passed upon by the bond commissioners under a statute recently enacted.

The prosecutor, therefore, does not receive from the law the responsibility for determining either the amount of the bail bond nor the sufficiency of the surety. It can, without injustice, be said, however, that amid all the abuses regarding bail bonds, such as the illogical variability in amounts demanded, the inadequacy of the sureties, or the use of the professional bondsman, the prosecutor has been quiescent, though he is in position to know most of the evils. He should be best fitted by position and experience to be the public's crusader against these abuses.

There is, however, in relation to bail bonds in municipal cases, a definite statutory duty imposed upon the municipal prosecutor, namely,

that of enforcing the bond after forfeiture. Bail bond collection cases are treated as civil, not criminal, and therefore placed in charge of the civil branch of the Director of Law's office. This work, however, constitutes an exceedingly important part of the administration of criminal justice, and an examination of the way in which it has been performed is properly included in a survey of the prosecution. The importance of the work cannot be overstated, since the bail bond fails to perform its part in the administration of criminal justice if there be a habitual and known failure to enforce the forfeited bond.

Table 14 gives the statistics of number and amount of forfeited bonds in municipal cases, with the judgments obtained and amount collected thereon covering the period January 1, 1916, to May 20, 1919. These are the latest data collected by the office of the auditor of the State of Ohio.

TABLE 14.—NUMBER AND OUTCOME OF SUITS UPON FORFEITED BONDS

	Number of bonds	Amount
Bonds forfeited and delivered to Department of Law for collection	143	\$61,200.00
Suits filed	107	46,900.00
Judgments rendered	68	30,000.00
Cases pending	39	16,900.00
Amount judgments obtained	54	20,315.00
Judgments for costs only	14	32.55
Judgments collected	14	965.10
Cost judgments collected	8	16.35
Judgments—no execution issued	22	10,450.00
Costs—no execution issued	6	16.45
Executions returned "no property"	22	8,075.00
Executions not returned	3	855.00
RECAPITULATION:		
Total bonds received by Department of Law	143	61,200.00
Suits brought	107	46,900.00
Judgments rendered		20,315.00
Judgments collected		965.10
Judgments costs only	14	32.55
Judgments costs only collected	8	16.20

The court had the power to reduce the amount of judgment below the amount of the bond, and, in fact, to render judgment for any sum—even for court costs only. The function of collecting the judgment is in the sheriff, not the prosecutor; consequently the prosecutor cannot be held entirely responsible for the results. Still, he cannot be absolved from all responsibility for a situation in which only 1.5 per cent. of the bonds have been collected, for a policy and practice of vigorous enforcement would certainly be more productive.

HOURS OF WORK; PRIVATE PRACTICE

One excuse constantly advanced for the inadequacies of the prosecutor's performance is that, with the current volume of work, there is insufficient time to do things more efficiently. Much of the work must necessarily be done in the court-rooms, at the police department, and elsewhere outside of the office. Consequently an accurate time study taken at the office itself would be unfair and valueless.

The writer dropped into the office one afternoon about 4. There was little activity. He was told that the rush period is at 8 in the morning, that being the time when the police and other prosecuting witnesses come in great numbers. So, within a few mornings thereafter, he arrived at 8 o'clock. None of the prosecutors had come in and there was no great stream of visitors. Not until nearly 9 did the stream accumulate or the prosecutors arrive. He casually dropped in on two or three afternoons around 3, having first ascertained that the members of the office were not at that time engaged in the court-rooms. He found several of the assistants absent. On other days there were sitting on the Municipal Court bench judges who continued the sessions into the afternoon, and on these afternoons the prosecutor's office remained active to a later hour. All this is not statistical data, and a thorough time study is impracticable. There can be no doubt of the immense quantity of work done by this office. The full working time of the members of it, however, is not given to the service, and the aggregate working hours of the office could unquestionably be increased without overtime or increase of force.

It is an unwritten rule of the office that members of the staff abstain from private practice during their connection with it. The Cleveland public has the feeling that this rule is not entirely complied with. However, at the beginning of this survey only one of the group, namely, A. L. Kreisberg, had his name on the door of a private law office and his name and office address in the city and telephone directories. While the survey was in progress his name was taken off the door, though the manager of the building states that he had severed his connection with the building fully a year earlier.

Private practice necessarily cuts into the time, energy, and attention which proper performance of the work demands. But that is not its most serious aspect. Lawyers engaged exclusively in private practice know the frequency with which the possibilities of conflicting interests of clients produce complex ethical problems. For an attorney who represents both public and private interests, these problems become more numerous and difficult. The private practice of a man in the prosecutor's office inevitably furnishes an opportunity and temptation to corruption

in its most complex and subtle forms, from which only the strongest man, and one conscious of the finest ethical distinctions, can escape. But, more than that, even where there is no corruption, public suspicion may be aroused, and that is damaging to the administration of justice. The example of Caesar's wife may have been overworked; still, the standard applied to that lady, that not only her virtue should be unimpaired but her conduct such as to raise her above suspicion, is surely applicable to persons engaged in the administration of justice.¹

¹ An illustration from real life in Cleveland illustrates the danger.

An automobile owned and driven by R. L. Smith had brushed one of a group of four men standing on the street. None of the four was injured. Smith was arrested on December 3, 1920, charged with reckless driving, tried, and found guilty and sentenced to pay a fine of \$100 and to serve thirty days in the workhouse. A motion for a new trial was made, and Smith let out on bail pending the hearing of the motion, which was set for December 7. Up to that point Smith was represented by Attorney Arnold. Between December 3 and 7 Smith was visited by an attorney named H. L. Lavine, representing the four men on the street. Lavine asserted that he was a partner of Assistant Prosecutor Kreisberg, and that he "stood in" with the prosecutor's office and could get the sentence of thirty days' imprisonment removed and would himself pay Smith's fine, if Smith would pay \$800 in settlement of the civil damage claims of Lavine's clients. Lavine's office was in one of the rooms of the suite of offices on the door of which was Kreisberg's name, and Lavine's office telephone number was the same as that given in the directory for Kreisberg's office. One of the four claimants worked at the cigar-stand in the building in which this suite was located.

Smith proceeded to take steps to borrow the \$800 and expected a check on or about December 7, and arrangements were made to postpone the hearing for the motion for new trial to December 23. When the time for hearing arrived, Attorney Arnold was in the court-room. Lavine asked him to take no part in the hearing, and submitted a form of receipt for Smith's signature, to which Mr. Arnold objected on the ground that it might constitute evidence of the compounding of felony. In the meantime Attorney George Disette had been retained to supervise the settlement of the civil claims, and the \$800 check had been deposited with him, and he in turn had deposited it in a bank, so as to have it in convenient shape for division among those to whom the money might ultimately be payable. Consequently Smith did not have the money in his hands when the motion was called on December 23. Judge XX, who heard the case, acting, as he states, under the impression that Smith had arranged to settle the matter with the claimants, entered upon his docket, "motion for mitigation granted, original sentence changed, days suspended, fine and costs to be paid." The judge then asked Smith whether he had arranged "restitution," to which Lavine answered that Smith had a check and was prepared to make restitution. The judge then handed the papers in the case to Smith, so that he might take them to the clerk's office and there pay the costs and fine. In the hallway between the court-room and the clerk's office Lavine engaged Smith in conversation and induced Smith to give him the papers, and then notified Smith that, unless he paid the \$800 within twenty minutes, he, Smith, would have to go to jail,

and Lavine refused to go to Dissette's office for the money. In the absence of the papers the clerk refused to accept from Smith payment of the fine and costs.

In this critical situation Dissette was telephoned for and came over to the Municipal Court building. Lavine repeated his threat that unless the \$800 be immediately given him Smith would have to go to jail. Dissette requested Lavine to give the papers to the clerk, which was not done. The next day Smith retendered the fine and costs, which the clerk again refused to accept. Smith had planned a trip East, and Dissette advised him that, as he had twice tendered fine and costs, he could safely go.

He returned early in January and was promptly rearrested. He brought habeas corpus proceedings in the Common Pleas Court. Now, we have seen that, on the day of the hearing, Judge XX entered on his docket or calendar the order "motion for mitigation granted, original sentence changed, days suspended, fine and costs to be paid." At some later time this entry was erased and in its place inserted, "Motion for mitigation overruled, original sentence ordered executed." Strangely enough, the official record of the court, namely, the journal and execution docket for December 23, contained the entry: "Defendant not in court, bond forfeited, capias issued." That was a false entry; for Smith was in court on that day and the bond had not been forfeited. The Common Pleas Court held, however, that it was bound by the record, and could not entertain proof of the falsity thereof, and therefore refused to grant a writ of habeas corpus, and Smith was returned to the jurisdiction of the Municipal Court, where a further hearing occurred on January 13.

Kreisberg did not represent the municipal prosecutor's office at the original trial on December 3, nor at the strange happenings of December 23, but he did appear for the public in the habeas corpus case and at this later hearing on January 13. Judge XX ordered the restoration of the original sentence, and, for some reason which is not quite clear from the records, added a fine of \$200 for contempt of court and Smith was sent to the workhouse on the original sentence. A few days later Judge XX suspended the fine in the contempt hearing and the original sentence of thirty days, leaving the original fine of \$100 and costs, which were paid. Before this Dissette had presented the matter to the Cleveland Bar Association.

CHAPTER VI

THE COUNTY PROSECUTOR'S OFFICE

HISTORY

THE office of Prosecuting Attorney of Cuyahoga County was created contemporaneously with the creation of the county and is more than a century old. The statutes defining the general powers and duties of the office have undergone little change. In this century and more, however, the criminal law has grown enormously, and Cuyahoga County has developed from a community of isolated farmers to the most populous county in Ohio.

To the extent of available statistics, Table 15 states for the years 1863, 1880, 1890, 1900, 1910, 1920, and 1921 the population of Cuyahoga County, the number of indictments, the number of arrests in Cleveland, the number of prosecutors, assistants, and clerical force in the county prosecutor's office, and the total payroll of the office.

TABLE 15.—COMPARISON OF GROWTH OF THE POPULATION AND NUMBER OF ARRESTS, WITH THE NUMBER AND SALARIES OF THE COUNTY PROSECUTOR'S STAFF, 1863-1921

Year	Population of Cuyahoga County	Number of indictments	Number of arrests for city of Cleveland	Number of county prosecutors on criminal side	Size of clerical force, criminal side	Payroll ¹ of office	Salary of chief prosecutor
1863	..	60	1,687	1	..		
1880	196,943	187	7,432	2	..	\$1,577.50	\$2,000.00
1890	309,970	..	9,616	2	..	2,689.60 ²	1,999.92 ²
1900	439,120	512	19,923	3	1	12,260.00 ³	3,500.00 ³
1910	637,425	595	7,185 ⁴	5	1	19,500.00	5,499.97
						18,603.93	
1920	943,495	2,762	27,615 ⁴	6	2	37,500.00	5,500.00
						35,572.76	
1921	..	2,549	..	8	2	48,400.00	5,500.00

¹ This is whole payroll of office, including both civil and criminal branches.

² Figures for 1887, as 1890 were not available.

³ Figures for 1902, as 1900 were not available. \$900 for stenographer, and \$6,300 for county solicitor and his assistant and stenographer in addition to the above.

⁴ Decline due to temporary "golden rule" policy.

⁵ 79,897 warned and released.

CRIMINAL COURT IN OPERATION

Among possible classifications, the cases in the criminal division of the Common Pleas Court may be divided into those in which public excitement pushes the prosecutor to unusual effort, and those where no extra lime-light has been turned on. It is these ordinary cases which best illustrate the administration of criminal justice.¹

The trial of two cases a day by the same prosecutor before the same court is habitual, the trial of three cases a day very frequent, of four cases not exceptional. In addition to the trials, there are generally each day several arraignments of accused "for receipt of the plea," and also the pleas of guilty with sentence thereon. The course of most trials is interrupted by these miscellaneous matters and by the receipt of the jury verdict in a previously tried case.

Just before entering upon the trial of the first case of the day the trial prosecutor receives from the assignment commissioner a package of papers consisting of the indictment and other pleadings, the names of witnesses, and notes of the testimony of the witnesses before the grand jury in cases which might be reached that day. It is quite apparent that he proceeds to try the case with little or no knowledge of its details almost up to the moment of trial, and that his only information consists of the names of witnesses and scribbled or scattered notes of their testimony before the grand jury. At these he has to glance continually to keep the case going. For questions to ask the witnesses he must rely largely on the promptings of the police officer, who sits at his side, or on inspiration from the answers to other questions given by the witness on the stand. One is reminded of the Italian *commedia dell'arte*, in which the players, not having learned their parts beforehand, take each line

¹ The success of criminal law enforcement is best judged by results in the general run of habitual offenses, and not by its sporadic triumphs in occasional sensational murder cases. The young man who, by reason of mental and moral make-up or environment, has in him the potentialities of a professional criminal, does not begin his career with a murder or large-scale robbery. His first offense is more liable to be petit larceny, porch-climbing, or small hold-up. If the administration of justice can be effective in discouraging the development of his criminal career, this is the time and point for it to operate. Furthermore, most of us have a very large chance of going through life without being the victims or intended victims of the murder of passion or revenge. But we and our families and our homes are in daily danger of attracting the cupidity of the second-story man or "stick-up." The general peace and security are more dependent on society's treatment of the regular flow of ordinary crimes than on the results of the few great murder cases which attract public attention and create public excitement. The efficiency of the prevailing system must be judged by methods and results in the regular run of the cases.

from the prompter and improvise the performance as they go along. Both these Italian actors and these trial prosecutors develop a speed and a skill of improvisation which are truly remarkable. But the latter have this disadvantage—that they are engaged in a combat for which the adversary is carefully prepared. The prosecutor does not, like the English barrister, have at his elbow a junior counsel who has carefully studied all the law and the facts, and a solicitor who has interviewed the witnesses and who supplies the trial lawyer with thoroughly prepared material.

The trial prosecutor does not receive, either at or before the trial, a comprehensive brief of the facts, setting forth the testimony which may be expected from the witnesses. Where the case involves no special difficulties of investigation or preparation, and especially where the case has been thoroughly developed by the police department, things may go well enough. It is obvious, however, that the State takes more chances than the defense and assumes the handicaps of unpreparedness.

The trial prosecutor does not seem to exercise particular care in selection of the jury. There is no preliminary effort to learn who the jurors might be and their social and political affiliations. The prosecutor contents himself with two or three general questions, such as: Do you know the defendant? Do you know the defendant's attorney? Do you know anything about the case? Do you know of any reason why you should not make an impartial juror, etc.? He does not always wait for the answers. In the course of the term he learns from experience in previous cases the names of the jurors who seem habitually and obstinately to hold out for the defendant. These he gets rid of. As every lawyer knows, the opening statements to the jury (made before the introduction of any evidence) furnish an opportunity for skilful advocacy, and many a case is won or lost in the opening statement; but here again one of the trump cards is dealt to the defendant's attorney. The prosecutor, knowing so little about the case at this early stage, is able to tell the jury only a very scanty, vague, and uninteresting story. .

According to the statement of a prominent member of the force of former Prosecuting Attorney Samuel Doerfler, the system of keeping the trial prosecutor ignorant about the case until within a few minutes before trial was established by Mr. Doerfler because of his distrust of his own assistants. It was designed, it was said, to allow the assistants as little opportunity as possible to block or drop the prosecution. This certainly indicates that the former prosecuting attorney had little control over his assistants, and is a startling illustration of the distrust theory of government.

The present county prosecutor, Mr. Stanton, would probably deny

lack of control over his assistants. The statutes gave him the power of selecting his assistants; but there can be little doubt that, following custom, he permitted a political organization or leader to have powerful influence in the selection.

A recent incident certainly tends to indicate that he does not have or does not exercise the appropriate amount of control over his organization. One Joseph Mazzeo was indicted for receiving a stolen automobile. There was a preliminary examination in the Municipal Court, Mazzeo had been indicted, failed to appear for arraignment, his bond was forfeited, and *capias* was issued. He was recaptured and pleaded not guilty. The trial was in progress on May 4, 1921, the prosecutor's office being represented by Assistant Prosecutor Frank E. Boldiszar. In the midst of the trial Assistant Prosecutor Blase A. Buonpane walked into the court-room and requested a *nolle*. Boldiszar said nothing, and the request coming from a member of the prosecutor's office, was granted by the court and a *nolle* entered in the case. Previous to his incumbency in the prosecutor's office Buonpane had represented Mazzeo in this same matter of the stolen automobile at earlier stages of the case. For this reason James T. Cassidy, the first assistant prosecutor, had expressly instructed that there should be no *nolle* of this case. Buonpane continues in his position as assistant prosecutor.¹

OFFICE ORGANIZATION

The office force of the county prosecuting attorney consists, in addition to himself, of the seven assistant prosecuting attorneys, two stenographers, and a county detective. This county detective, so called, though an experienced police officer, is used as a sort of general utility man and grown-up messenger boy. Until June, 1921, there was no managing clerk.

There is a degree of specialization of the work of the assistants, one having charge of the presentation of cases to the grand jury, two or more are assigned regularly to the trial of cases, and others are reserved for special assignment in the more important cases. The prosecutor himself takes part in the more important cases and exercises some executive direction and control. Visitors can select the particular assistant with whom they will choose to talk, the stenographers attempting to do some sifting out so as to reduce the waste of time of the office.

¹The trial judge states that the merits of the case justified a *nolle*. We intend to express no opinion on the merits of the *nolle*.

The physical conditions of the offices, while not impressive nor adequate, compare most favorably with the conditions in the municipal prosecutor's office. The prosecuting attorney himself has a good-sized room in the suite devoted to the civil branch of the work. There is a fair-sized waiting-room. The suite used by the criminal assistants consists of a fair-sized waiting-room, part of which is railed off for the stenographers. There are five private offices, running from 150 to 225 square feet, the smallest occupied by the county detective and the other four by the assistants, two of whom occupy one of the rooms and three, another.

RECORD SYSTEM

The record system in use in both the county courts and county prosecutor's office is in favorable contrast with that of the municipal offices. The county clerk maintains a well-indexed criminal docket, using the same system and the same thoroughness as in civil cases.

An office docket of all cases is kept, containing the name of defendant, the charge, the plea, and the final disposition. It contains the name of the assistant prosecutor who has charge of the case, but does not contain the name of the defendant's attorney. Nor do the dockets or records of the court clerk contain the name of the defendant's attorney. Each docket-book has an index attached. There is also the file of the cases, containing the original papers, on which are noted the steps taken in the case, with the notes from the grand jury rooms and any special information which may be of use in the trial of the case. Mr. Stanton has recently instituted a card system or docket in which pending but not completed cases are alphabetically arranged.

With some slight improvements the record system, in both the clerk's and prosecutor's offices, would enable both the prosecutor and public to ascertain the status of a case, past and present, and enable members of the prosecutor's staff to find without delay whatever information is in the office.

PERSONNEL

The present prosecutor is Republican and has been in office since January, 1921. His predecessor, Samuel Doerfler, was a Democrat.¹ The following is a list of the personnel of this office during these two administrations, with the period of service, age at commencement of service, and number of years at the bar previous to service.

¹ During a few months in 1920 R. A. Baskin was prosecuting attorney, succeeding Mr. Doerfler, who resigned before the end of his term.

Name	Term	Age at com- mence- ment of service	Date admitted to bar	Years ad- mitted to bar on com- mencement of service
DEMOCRATIC				
Samuel Doerfler, Prosecutor	1916-1920	41	1897	19
<i>Assistants</i>				
Fred W. Green	1916-1920	45	1896	20
George Howells	1913-1915	35	1900	12½
John J. Babka	1912-1919	28	1908	4
Stephen M. Young	1917-1920	29	1910	6
William J. Corrigan	1917-1920	31	1915	1½
Felix T. Matia	1916-1920	..	1914	2
D. R. Rothkopf	1917-1920	27	1914	3
Tim J. Long	1918-1920	33	1915	2½
Florence Allen	1919-1920	35	1914	5
A. W. Chaloupka	1919-1920	33	1917	2
R. A. Baskin	1918-1920	35	1910	7½
Albert Lawrence	1919-1920	61	1880	39
Frank Merrick	1920	26	1916	4
Joseph Dembe	1920	36	1914	6
Myles Frazier	1920	31	1914	6
Thomas Dunlap	1916-1918	48	1890	25
REPUBLICAN				
Edward C. Stanton, Prosecutor	1921-	32	1913	7½
<i>Assistants</i>				
Geo. C. Hansen, civil	1921-	40	1899	20½
E. J. Thobaden, civil	1921-	56	1887	33
Henry Williams, civil	1921-	22	1920	½
James T. Cassidy	1921-	34	1913	7½
John J. Sexton	1921-	42	1915	6½
Harry E. Parsons	1921-	46	1900	21
Frank E. Boldiszar	1921-	25	1917	3½
Eva L. Jaffa	1921-	28	1915	6½
Blase A. Buonpane	1921-	29	1916	5
W. I. Krewson	1921-	26	1919	1

On the delicate subject of the ability of the members of the office, the same two prominent Democratic and Republican lawyers who had given their judgment upon the ability of the municipal prosecutors were consulted, and again their opinions were surprisingly similar. According to their judgment of the eight members of the force, one has exceptional trial ability, another is an able lawyer, a third has only fair ability as a lawyer, a fourth is a poor lawyer, while the remaining four have not had sufficient experience or standing at the bar to enable their professional brothers to know or judge of their ability.

Of the lawyers who answered the questionnaire, 92 expressed the

TABLE 16.—ALL INDICTED CASES, COMMON PLEAS COURT, 1919, CLASSIFIED BY THE PROSECUTOR IN CHARGE AND BY THE DISPOSITION

Disposition	All cases	Prosecutor known	Prosecutor unknown	Names of prosecutors							Other prosecutors	
				Allen	Charloupka	Corrigan	Doerfler	Long	Matis	Rothkopf		Young
No trial, but defendant sentenced	1,215	19	1,196	138	77	219	3	145	154	183	242	35
Original plea of guilty, offense charged	428	9	419	68	26	74	1	51	42	69	65	23
Plea guilty, offense charged changed to guilty of lesser offense	5	..	..	..	..	..	..	..	..	..	..	..
Original plea guilty, lesser offense	92	..	22	3	1	3	..	4	2	2	7	..
First plea not guilty, second unknown	17	..	17	1	5	1	..	3	2	3	2	..
Plea not guilty, changed to guilty of offense charged	550	6	544	54	34	118	2	62	70	75	113	7
Plea not guilty, changed to guilty of lesser offense	193	4	189	12	11	22	..	24	28	32	55	5
Abated by death	6	..	6	1	..	2	..	..	2	..	1	1
Apparently unfinished	25	9	16	..	1	1	1	2	2	6	1	2
Bail forfeited, capias issued	33	31	2	..	..	..	..	1	..	1	1	..
Committed to institution for insane	25	..	..	..	..	1	..	..	..	..	..	..
Committed to institution for insane then <i>nolle prosequi</i> entered	2	..	..	..	..	..	..	..	..	..	..	..
Dismissed for want of prosecution	15	15	..	..	1	..	..	..	..	..	..	..
Dismissed on demurrer	10	..	10	..	..	..	..	..	..	..	..	..
Convicted of felony	293	4	289	26	24	41	1	46	48	46	50	7
Convicted of felony, <i>nolle prosequi</i> entered after new trial granted	13	..	13	..	1	2	..	8	1	2	3	1
Convicted of misdemeanor	72	..	74	6	8	10	..	18	13	10	9	..
Indicted but never apprehended	57	54	3	..	..	1	..	..	..	..	1	..
Jury disagreed, no further information	1	..	..	..	..	..	..	..	..	..	..	..
Jury disagreed, then <i>nolle prosequi</i> entered	6	..	6	..	..	2	..	1	1	..	1	2
<i>Nolle prosequi</i> entered on all counts	399	6	393	32	19	69	29	30	68	34	102	10
<i>Nolle prosequi</i> entered on part of counts after plea of guilty on others	6	..	6	4	2	..	..	..	..	..	..	..
<i>Nolle prosequi</i> entered on part of counts after conviction on others	5	1	4	..	1	2	..	..	1	..	..	..
<i>Nolle prosequi</i> entered on part of counts after conviction on others	215	2	213	14	28	28	1	44	36	29	27	6
Acquitted of felony	8	..	..	..	..	..	..	..	..	1	1	7
Acquitted of misdemeanor	2	..	..	..	..	..	..	..	..	..	..	..
Transferred to Juvenile Court	21	..	21	..	..	..	..	..	..	..	..	..
Transferred to Juvenile Court, then <i>nolle prosequi</i> entered	2	..	2	..	..	1	4	..	1	2	10	3
Convicted, no sentence indicated	3	..	3	..	..	1	..	1	1	1	1	..
Convicted, second trial, then acquitted	3	..	3	..	..	..	..	..	..	..	..	..
Jury disagreed, then acquitted	2	..	2	..	..	1	..	..	..	..	..	1
Convicted, transferred to United States immigration authorities	1	..	1	1	..	..	..	..	..	..	..	..
Discharged on motion to discharge	5	..	5	..	..	..	..	1	4	..	..	..
<i>Nolle prosequi</i> entered, defendant convicted or in prison on other charge	84	1	83	2	1	10	15	5	31	6	11	2
Unknown	29	26	3	..	..	..	..	..	2	1	..	..
Total	2,539	168	2,371	224	163	393	55	299	308	322	470	77

opinion that the prosecutors were lacking in the necessary ability and competence, while only one or two expressed a contrary opinion.

The present prosecuting attorney, Mr. Stanton, served five years in the municipal prosecutor's office, during one of which he was chief. Judging by the methods and organization of that office at the end of his term, he did not there disclose the desire or the talent for that strong executive control or leadership whereby policies and standards are initiated and carried out and the administration of an office is freed from accumulated bad habits and molded into an effective, enlightened, and modernized institution. He became county prosecutor in January, 1921, since which date certain improvements have occurred, such as creation of the position of managing clerk and the beginnings of a card docket system. The period of his incumbency in that office, however, has been perhaps too short from which to judge whether or not he will develop the desire or the talent for such executive control or leadership.

As shedding some light on the work of individual prosecutors, a detailed study was made of the disposition of the 1919 cases, with classification according to disposition of the case, and with a further classification according to the particular prosecutor who had charge of the case. The results of this study are shown in Table 16. The column designated "All cases" gives the number of cases which received the dispositions noted in the first column. The column designated "Prosecutor unknown" contains the number of the cases in which the records fail to disclose the names of the prosecutor in charge. The next column gives the total of cases in which the records disclose the assistants who were in charge, and in the subsequent columns the cases are distributed among these assistants according to the records.

This illustrates a possible method of measuring or, at least, of obtaining some facts for measuring the work of the assistants. The small figures in the columns of some of the assistants indicate that they were engaged in work other than trials, such as preparation of evidence or presentation of cases to the grand jury.

The salary list of the county prosecutor's office follows:

Prosecuting attorney	\$5,500
First assistant	5,000
Second assistant	3,800
Third assistant	3,600
Remaining four assistants, each	3,000

CHAPTER VII

OPERATION OF THE COUNTY PROSECUTOR'S OFFICE

PREPARATION OF CASES

IN general, the prosecuting attorney and his assistants take no part in the investigation of the crime or the molding of the proof. He has no machinery, other than his busy assistants and the single county detective or general utility man, for detection of the offender or discovery of proof. He has no facilities for modern methods of criminal investigation. He pits his unpreparedness, with such assistance as he may obtain from the police department, against the carefully prepared case of the defendant's attorney. He takes the proof in the way it has been prepared by the police or municipal prosecutor, making the best of what he gets, or, in more serious cases, attempting to remedy the defects or omissions.¹

¹ The well-known Kagy murder case affords an interesting example of the dangers of this system. Harold Kagy was shot early on the morning of May 9, 1920, while he and two others were standing at a street corner. One of these two companions was named Joyce. There remains some mystery as to who the other may have been. The then Chief Justice of the Municipal Court, William H. McGannon, was accused of being the third person. He denied this, but has been convicted for perjury in making this denial upon his trial for the murder. Kagy was taken to the hospital on May 9 and was there until his death, thirteen days later. Obviously, the main issue was as to the identity of the person who fired the fatal shot and, obviously, the best proof of this identity would have been Kagy's death-bed statement. The rule of evidence regarding the admissibility of a death-bed statement is familiar to most lawyers. The main factor determining this admissibility is the knowledge of the dying man that he is dying. There is a fairly conventional and traditional method of ascertaining this factor. The police department entirely failed to obtain Kagy's death-bed statement, and permitted the statement to be obtained by two brothers of Kagy, who failed to obtain the necessary proof of Kagy's knowledge of his critical condition, with the result that the death-bed statement was excluded from the evidence. This failure might have been avoided if the prosecuting attorney's office had been called into the situation in time to take charge of the obtaining of the death-bed statement. Members of the police department visited the hospital from day to day, and were actually just outside the room at the time Kagy's two brothers took the statement. Though the case was the sensation of the day, there is no indication that during these thirteen days the prosecuting attorney took any step whatever to get in touch with or instruct the police department. Both Joyce and McGannon were acquitted.

The period elapsing between the arrest and the presentation to the grand jury varies from a few days to 500 days, during which there is time for the disappearance of witnesses, the destruction or elimination of dangerous documents, and the coaching of possible witnesses, in addition to the effects upon the memories of witnesses made by the public discussion of the case in the press and elsewhere. [No member of the county prosecutor's office is present in the office of the municipal prosecutor while the affidavit is prepared, nor in the Municipal Court during the preliminary examination. Owing to the constancy of the stream of work, practically no attention is given to the case, its proof or lack of proof, until the moment of presenting it to the grand jury.

The assistant who has charge of the presentation of the cases to the grand jury has generally, up to the very moment of presenting a case, no familiarity whatever with the case, its facts or proof. He simply calls in the witnesses whose names are noted on the papers which have come up from the municipal prosecutor. Sometimes, if this rather casual testimony before the grand jury proves inadequate or there are indications of the possibility of improving the proof of the case, an attempt is made to find additional testimony before the grand jury passes on the case.

TABLE 17.—AVERAGE NUMBER OF DAYS USED IN DISPOSING OF CASES ORIGINATING IN THE SEVERAL COURTS, COMMON PLEAS COURT, 1919

Court of origin	Number of cases	Average number of days		
		From arrest to indictment	From indictment to disposition	From arrest to disposition
Municipal	2,033	20.8	46.6	67.4
Magistrates	89	26.2	40.2	76.4
Grand jury ¹	198	14.4	99.6	85.2
Unknown	5	25.4	36.4	61.8
Total	2,325	18.0	51.3	69.3

With exceptions, so rare as to be negligible, the testimony before the grand jury is not taken down stenographically or otherwise and no

¹In cases originating in the grand jury arrest follows indictment, hence the first of the three averages is the reverse of the others in its column, being the time from indictment to arrest, rather than, as otherwise, from arrest to indictment. This is shown also by the fact that the third average is less than the second, contrary to all the other groups of cases.

List of dispositions	Municipal and Magistrates' Courts and origin unknown			Grand jury original indictments		
	A.	B	C	A	B	C
Total	67.8	46.3	21.5	85.1	99.5	14.4
No trial but defendant sentenced	49.2	29.8	19.4	25.5	47.0	21.5
Original plea of guilty offense charged	26.1	9.8	16.3	16.4	49.4	33.0
Plea guilty offense charged to guilty of lesser offense	51.0	15.0	36.0			
Original plea guilty lesser offense	27.9	1.5	26.4	3.0	7.0	4.0
First plea not guilty, second unknown	46.1	20.9	25.2			
Plea not guilty changed to guilty of offense charged	62.5	42.0	20.5	26.2	44.9	18.7
Plea not guilty changed to guilty lesser offense	65.6	42.2	23.4	37.7	53.2	15.5
Abated by death	211.2	193.6	17.6	155.0	179.0	24.0
Apparently unfinished	46.0	102.0				
Ball forfeited, capias issued	15.0		15.0			
Committed to institution for insane	68.6	46.4	22.2			
Committed to institution for the insane, then <i>nolle prosequi</i> entered	145.0	134.0	11.0			
Dismissed for want of prosecution	215.0	245.0		291.3	298.3	7.0
Dismissed on demurrer	136.1	74.1	62.0	63.5	65.7	2.2
Convicted of felony	71.7	52.8	18.9	74.6	113.8	39.2
Convicted of felony, <i>nolle prosequi</i> entered after new trial granted	228.0	212.5	15.5			
Convicted of misdemeanor	60.4	39.1	21.3	36.0	51.5	15.5
Indicted but never apprehended	22.0		22.0			
Jury disagreed—no further information	57.0	26.0	31.0			
Jury disagreed, then <i>nolle prosequi</i> entered	80.4	57.8	22.6			
<i>Nolle prosequi</i> entered on all counts	99.8	75.5	24.3	124.6	134.5	9.9
<i>Nolle prosequi</i> entered on part of counts after plea of guilty on others	40.1	22.0	18.1			
<i>Nolle prosequi</i> entered on part of counts after conviction on others	28.7	12.8	15.9			
Acquitted of felony	83.6	54.7	28.9	55.6	62.3	6.7
Acquitted of misdemeanor	82.0	18.0	64.0	40.0	41.0	1.0
Transferred to Juvenile Court, then <i>nolle prosequi</i> entered	11.5	3.5	8.0			
Transferred to Juvenile Court, then <i>nolle prosequi</i> entered	129.1	113.4	15.7	217.0	221.0	4.0
Convicted—no sentence indicated	33.0	16.7	16.3			
Convicted—second trial—then acquitted	381.0	333.0	48.0	466.0	484.0	18.0
Jury disagreed, then acquitted	239.0	202.0	27.0	363.0	363.0	
Convicted, transferred to United States immigration authorities				17.0	18.0	1.0
Discharged on motion to discharge	45.8	27.8	18.0			
<i>Nolle prosequi</i> entered—defendant convicted or in prison on other charge	84.6	56.7	27.9	44.0	75.6	31.6
Disposition unknown	22.6		22.6			

¹ Time Interval C is the difference between the average Time Intervals A and B.

² Results insignificant because of insufficient number of cases.

TABLE 19.—ACCUMULATION OF WORK IN COMMON

	1916			1917		
	Num- ber	Totals		Num- ber	Totals	
1. Total cases requiring action at end of April term	..	386		..	457	
2. Indictments pending at end of April term	350	..		426	..	
3. Cases bound over not acted on at end of April term	16	..		31	..	
GRAND JURY WORK						
4. Total cases for grand jury, July term	..	348	Per cent. accumu- lated cases	..	400	Per cent. accumu- lated cases
5. Cases bound over and not acted on at end of April term (line 3 above)	16	..	to indict- ments re- turned fol- lowing and preceding years	31	..	to indict- ments re- turned fol- lowing and preceding years
6. Cases bound over during July term	332	..		369	..	
7. Total cases acted on by grand jury, July term	..	93		..	148	
8. Cases—true-billed by grand jury, July term	74	..		105	..	
9. Cases—no-billed by grand jury, July term	19	..		43	..	
10. Cases remaining before grand jury, end of July term	..	255		..	252	
11. Indictments returned during following year	..	1,725	14.78	..	2,150	11.72
12. Indictments returned during preceding year	..	1,213	21.02	..	1,725	14.61
PETIT JURY WORK						
13. Total indictments ready for trial during July term	..	424	Per cent. accumu- lated cases	..	531	Per cent. accumu- lated cases
14. Indictments pending beginning July term (line 2 above)	350	..	to cases disposed of preceding and fol- lowing years	426	..	to cases disposed of preceding and fol- lowing years
15. Indictments returned during July term (line 8 above)	74	..		105	..	
16. Total cases disposed of during July term	..	37		..	66	
17. Cases disposed of by trial during July term	..	..		16	..	
18. Cases disposed of by plea during July term	37	..		50	..	
19. Total cases undisposed of at end of July term	..	387		..	465	
20. Embryonic indictments in cases still to be acted on by grand jury computed by taking 76 per cent. of figure appearing on line 10 above	..	194		..	192	
21. Accumulation of cases for petit jury, beginning of September term	..	581		..	657	
22. Total cases disposed of during following year	..	1,657	35.06	..	1,756	37.41
23. Total cases disposed of during preceding year	..	1,090	53.30	..	1,657	39.65

transcript of the testimony is made. The prosecutor in the grand jury room sometimes finds time to scribble on the papers a few rough notes of the testimony. We have seen that these rough notes offer all the trial prosecutor learns about most cases before jumping into the trial of them. It is a system of serial unpreparedness.

This lapse of time between the various stages of the cases was investigated statistically, with the results as shown in tables herewith. Table 17 shows, in all of the 1919 cases, the average number of days between arrest and disposition of the case, between the indictment and the disposition and between arrest and indictment. The averages are of all cases, including those in which there is a plea of guilty and in which, therefore, no further preparation for trial was required. Naturally, if contested cases only were included, the average time intervals would be greater than disclosed in this table. The classification is according to place where the case originated, namely, Municipal Court of Cleveland, magistrates' courts outside of Cleveland proper, and the grand

PLEAS COURT DURING SUMMER VACATIONS, 1916-1920

1918			1919			1920			Totals, average, and per cent. accumulation for five years, 1916-1920			
Number	Totals		Number	Totals		Number	Totals		Total of numbers	Total of totals	Averages	
822	832		814	836		521	537		2,933	3,028	606	
10	..		22	..		16	..		95	..	587	
..	425	Per cent. accumulated cases to indictments returned preceding and following years	..	304	Per cent. accumulated cases to indictments returned preceding and following years	..	477	Per cent. accumulated cases to indictments returned preceding and following years	..	1,954	391	Average per cent. accumulated cases to indictments returned preceding years
415	86	..	282	..	..	461	..	..	95	..	19	..
79	..	..	..	..	..	..	..	..	1,859	..	372	..
7	339	..	..	304	..	..	477	..	327	..	65	..
..	1,940	17.47	..	1,735	17.52	..	..	..	258	..	51	..
..	2,150	15.77	..	1,940	15.67	..	1,735	27.49	69	1,627	14	..
..	..	..	..	..	..	..	..	..	..	8,763	326	18.57
..	901	Per cent. accumulated cases to cases disposed of preceding and following years	..	814	Per cent. accumulated cases to cases disposed of preceding and following years	..	521	Per cent. accumulated cases to cases disposed of preceding and following years	..	3,191	638	Average per cent. accumulated cases to cases disposed of preceding years
822	..	..	814	..	..	521	..	..	2,933	..	587	..
79	28	..	..	..	..	..	..	..	258	..	51	..
..	..	..	..	..	..	..	..	..	..	131	26	..
28	..	..	..	..	..	..	..	..	16	..	3	..
..	873	..	..	814	..	..	521	..	115	..	23	..
..	258	..	..	231	..	..	363	..	..	3,060	612	..
..	1,131	..	..	1,045	..	..	884	..	..	1,238	248	..
..	1,948	58.06	..	2,027	51.55	..	..	..	..	4,298	859	..
..	1,756	64.41	..	1,948	53.64	..	2,027	43.61	..	8,478	1,696	50.70

jury. "Unknown" represents cases whose place of origin could not be located.

Table 18 is an analysis of time intervals between arrest and indictment (presentation to grand jury) and between arrest and disposition, classified in accordance with the disposition—that is, these time intervals in the cases which resulted in plea of guilty or in those which were nolle, and so on.

These figures, it should be remembered, are averages. A case, for instance, in which the accused pleaded guilty in the Municipal Court would be a factor in making up the average.

A more intensive study was made of the time interval between cases bound over in July, 1919. This interval ranged from a minimum of 60 days to a maximum of 164 days, averaging 80 days in the 55 cases. These cases arose in the summer, probably while no grand jury was in session. But intervals such as these are by no means uncommon in cases arising at other seasons, and summer is probably

as favorable as any other period for disappearance of witnesses, impairment of recollection, and other damages to the effective administration of the criminal law.

The summer accumulation of cases, due to the absence of a grand jury and the vacation of some or all of the criminal court judges, produces a congestion at the beginning of what may be called the trial year, from which the administration of justice does not recover during the year and which is a fruitful cause of hurried, careless methods of preparation and trial. Table 19 is a study of the amount of this accumulation and its inevitably harmful effect. The accumulation is kept down by a feverish spell of trials toward the end of the April term of court, so that justice's summer vacation works backward and forward to impair efficiency.

An explanation may make Table 19 more intelligible. The April term of the court begins on the first Monday in April and ends on the first Monday in July, when the July term starts. The figures on line 10, namely, the cases remaining before the grand jury at the end of July term, represent the difference between the figures on lines 4 and 7. The figures on line 13, namely, the total indictments ready for trial during the July term, represent the total of the figures of the next two lines, 14 and 15. During the summer of 1916 and 1918 court was held for a short time to allow pleas of guilty and thus eliminate some of the cases. During the summer of 1917 a special session was held to receive pleas of guilty and also to hold a few jury trials. The figures on line 19, namely, total cases undisposed of at end of July term, represent the difference between the figures on lines 13 and 16. The records show that about 76 per cent. of the cases are "true-billed" by the grand jury and 24 per cent. "no-billed." Therefore, in line 20 it is assumed that 76 per cent. of the cases pending before the grand jury (line 10) will result in indictments.

One of the judges sitting in the criminal branch in January, 1921, was struck by the fact that 12 out of the first 16 cases before him in that month resulted in acquittals. He looked into the cause and came to the conclusion the fault lay in the serial or cumulative unpreparedness, to which we have called attention, accentuated just at this season by a change of administration in the prosecutor's office.¹ With careful and thorough preparatory work in the earlier stages of a case, together with systematic filing of the information and good office organization, this harmful effect of change of administration could be minimized.

¹ County prosecutors are elected in November of even numbered years, and take office the following January.

ASSIGNMENT OF CASES

Consideration of the opportunity of the trial prosecutor for preparation is necessarily connected with the system of the assignment of cases. The assignment of cases is in charge of the assignment commissioner of the criminal branch of the court. Cases are assigned for trial in the following order: first, all known criminals; second, defendants in jail; and third, bail cases. Within each one of these classes the cases are taken in numerical order. The rules of the Common Pleas Court provide that the prosecuting attorney shall furnish the presiding judge a list of known criminals against whom cases are pending, which the presiding judge certifies to the assignment commissioner. Like so many other rules, this is seldom observed.

Three or four days before the date set for trials of a group of cases the prosecutor receives from the assignment commissioner the list of the cases set for that day. When the day arrives, the cases go into one room or another in their numerical order, so that the prosecutor in any particular room cannot know in advance which of the cases will be assigned to the room in which he is acting. The assignment commissioner is able and willing to adopt and has urged the adoption of a system whereby each trial prosecutor will know several days in advance which cases will be assigned to the court-room in which he works.

THE GRAND JURY

No case is tried nor is any sentence imposed unless there is an indictment by the grand jury. This is true of those cases in which a preliminary examination has been held by the Municipal Court, as well as those which are first instituted in the grand jury. The latter class of cases forms between 9 and 10 per cent. of the whole. In over 90 per cent. of the cases, therefore, two preliminary examinations are held—one in the Municipal Court in the presence of the accused, and the second in the grand jury room without the presence of the accused.

As a matter of fact, the grand jury does little more than register in formal shape the opinion of the prosecuting attorney that there is sufficient proof to warrant a trial. Very rarely does the grand jury indict when the opinion of the prosecuting attorney is to the contrary, and vice versa.

The prosecuting attorney plays practically no part in the selection of the personnel of the grand jury. The process of selection is as follows: A number of names are drawn from the jury wheel, and those so drawn

are notified to appear at a designated time and place.¹ A considerable portion of those who appear ask, for one reason or another, to be excused, and the excusing of them is a responsibility of the court. As the session of the grand jury proceeds others ask to be excused. The vacancies created by these excuses are filled by the court from names selected by the court, the judge being free to select whom he please. Naturally, the selection is made from social or political acquaintances of the judge.

Tables 20 and 21 show the number and percentages of grand jurors in the six terms of the court from April, 1919, to January, 1921, whose names were drawn for the grand jury, who failed to appear and who served during part of the term, and of those who were selected by the court, with the growth of the percentage of the jurymen selected by the court as the sessions progressed.

TABLE 20.—NUMBER OF GRAND JURORS APPOINTED BY PRESIDING JUDGE FROM SOURCES OTHER THAN THE ORIGINAL PANEL

Term	1st week	2d	3d	4th	5th	6th	7th	8th	9th	10th	11th	12th	13th	14th	15th	Average for whole term
April, 1919	9	10	13	14	14	14	14	14	14	14	14	14	14	14	14	13.1
September, 1919	1	4	7	10	10	11	12	12	12	13	13	13	13	13	13	10.5
January, 1920	1	2	11	13	13	13	13	13	13	13	13	13	13	13	13	10.7
April, 1920	12	12	13	13	13	13	13	13	13	13	13	13	13	13	13	12.8
September, 1920	4	10	13	13	13	13	13	13	13	13	13	13	13	13	13	12.2
January, 1921	8	8	12	12	12	12	12	12	12	12	12	12	12	12	12	11.3
Total number	35	46	69	75	75	76	77	77	77	78	78	39	26	26	26	70.6
Average per week	5.8	7.7	11.5	12.5	12.5	12.7	12.8	12.8	12.8	13.0	13.0	13.0	13.0	13.0	13.0	11.8
Average per cent.	39	51	77	83	83	84	86	86	86	87	87	87	87	87	87	78.0

A grand jury is composed of 15 members. Table 20 gives the number of persons on the grand jury selected by the judge himself entirely from outside of the regular panel in the successive weeks of the session. In the last column is given the average number on the grand jury throughout the term who were thus personally selected. For instance, as shown by the table, in the April, 1919, term, during the first week nine out of 15 were thus selected from outside of the regular panel; and in the fourth week this grew to 14, where it remained throughout the rest of the term, making an average for the term of 13.1 out of 15 thus per-

¹ If they fail to appear, nothing is done about it. No instance was discovered in which the prosecuting attorney followed up the failure of the summoned juror to appear.

sonally selected. As shown by the lower lines of the table, taking the whole period covered by this study, namely, two years, an average of 11.8, or 78 per cent., out of 15 were thus selected.

Table 21 gives the number of those whose names were drawn and who were not found at all, or who were notified and failed to appear, or who, having appeared, were excused at the beginning or during the term. Twenty-five names are drawn for each grand jury. The table shows, for example, for the September, 1919, term, of the 25 names, four were not found, one failed to respond to the summons and six were excused. The table also gives in terms of "man-weeks" the relative percentages of time given to this service by those drawn from the panel and those selected by the judge. Thus, in the September, 1919, term, 68 aggregate weeks of service were given by those drawn from the panel, and 157 weeks by the others, being 30 and 70 per cent. respectively of the total time of the grand jury.

TABLE 21.—NUMBER OF ORIGINAL PANEL AND JUDGE SELECTIONS
(25 MEN IN PANEL FOR EACH TERM)

Term	Persons in original panel not found	Notified but failed to appear	Number excused from those actually appearing	Total man-weeks of grand jury	Man-weeks from panel		Man-weeks appointed by judge	
					No.	Per cent.	No.	Per cent.
April, 1919	..	11	8	165	21	13	144	87
September, 1919	4	1	6	225	68	30	157	70
January, 1920	3	..	8	165	47	28	118	72
April, 1920	3	..	13	180	26	14	154	86
September, 1920	6	4	4	225	42	19	183	81
January, 1921	8	3	7	165	41	25	124	75
Whole totals	24	25	46	1,125	245	..	880	..
Average per week	4	4	8	188	41	22	147	78
Per cent.	16	20	46	..	..	..	..	..

There is no way of telling, with anything approaching statistical accuracy, which class of selections makes the better jurors. The evil of the present practice is that it does not correspond with the system contemplated by the law. That system provides, through the jury commissioners, a machinery for placing in the jury wheel an adequate number of names of qualified persons, and permits the judge to fill vacancies which the law contemplates will be few and occasional. Whenever the methods provided by law are departed from, there follow a confusion and dissipation of responsibility which open the door to carelessness and subtle forms of corruption.

In all this the prosecutor has not violated any express provisions of

OF OFFENSES

Disposition	Against property	Against the person	Against public peace: carrying concealed weapons	Against public safety	Forgery and counterfeiting	Against minors	Against chastity	Against public justice	Frauds	Against the State	Miscellaneous	Total
No trial but defendant sentenced	449	241	335	77	59	23	20	1	7	..	3	1,215
Original plea of guilty offense changed to Plea guilty offense charged changed to guilty of lesser offense	142	58	158	31	26	8	2	..	1	..	2	428
Original plea guilty lesser offense	5	4	..	..	..	..	..	..	..	..	..	5
First plea not guilty, second unknown	18	4	6	..	1	..	..	..	..	..	..	22
Plea not guilty changed to guilty of offense charged	6	..	..	..	..	..	..	..	..	..	..	17
Plea not guilty changed to guilty lesser offense	175	89	171	46	30	15	17	1	5	..	1	550
Abated by death	103	86	..	2	2	..	1	..	1	..	..	193
Apparently unfinished	3	1	3	2	1	1	..	..	1	..	..	6
Ball forfeited, capias issued	5	7	8	3	4	1	..	..	1	..	4	25
Committed to institution for insane	15	2	8	2	..	..	..	..	1	..	..	33
Committed to institution for insane, then <i>nolle prosequi</i> entered	1	3	1	..	..	..	..	..	..	..	..	5
Dismissed for want of prosecution	..	1	..	..	..	..	1	12	..	..	3	2
Dismissed on demurrer	1	..	..	..	..	..	..	..	2	8	..	16
Convicted on felony	109	151	8	13	7	..	4	1	..	..	..	10
Convicted of felony, <i>nolle prosequi</i> entered after new trial granted	..	..	..	..	..	..	..	..	..	..	..	293
Convicted of misdemeanor	8	4	1	6	..	2	..	..	1	..	..	13
Indicted but never apprehended	13	40	12	1	1	22	..	..	2	..	..	74
Jury disagreed, no further information	18	8	1	1	..	..	..	..	..	..	4	57
Jury disagreed, then <i>nolle prosequi</i> entered	..	..	..	..	..	..	..	..	..	..	..	1
<i>Nolle prosequi</i> entered on all counts	3	2	25	29	13	14	1	7	6	..	8	6
<i>Nolle prosequi</i> entered on part of counts after plea of guilty on others	149	141	..	..	..	..	4	..	..	..	..	399
<i>Nolle prosequi</i> entered on part of counts after acquittal on others	6	..	..	..	..	..	..	..	..	..	..	6
Acquitted of felony	4	55	19	10	5	..	1	3	..	..	..	5
Transferred to Juvenile Court	92	1	..	..	..	..	1	..	..	..	..	215
Transferred to Juvenile Court, then <i>nolle prosequi</i> entered	..	..	..	..	..	..	..	..	..	..	7	8
Convicted, no sentence indicated	9	5	2	1	4	..	..	..	..	..	..	21
Convicted, second trial, then acquitted	2	1	..	..	..	..	..	..	..	..	..	3
Jury disagreed, then acquitted	1	1	..	..	..	..	..	..	..	..	..	2
Convicted, transferred to United States Immigration authorities	1	..	..	..	..	..	1	..	..	..	..	1
Discharged on motion to discharge	3	1	..	..	..	..	..	..	..	..	..	5
<i>Nolle prosequi</i> entered, defendant convicted or in prison on other charge	82	30	3	6	12	8	1	..	..	..	7	84
Unknown	7	6	1	..	..	..	..	..	..	..	..	29
Total dispositions after indictment	934	733	422	181	100	71	34	24	30	5	90	2,039
No bill	210	273	97	38	21	7	11	8	11	11	4	617
Total dispositions of all cases in Court	1,144	1,006	519	219	121	78	45	48	41	16	94	2,656

the law relating to him. But as he has a general function of law enforcement and responsibility for the prosecution of crimes, a responsibility which includes grand jury proceedings, he may fairly be blamed for his silence and drifting while this extra-legal system has developed.

STATISTICS OF RESULTS OF CASES

Table 3 in Chapter II discloses the number of cases in Common Pleas Court in 1919, together with the number and percentages of the cases which, for one reason or another, were not tried, those which were tried and resulted in convictions or acquittals, and the percentages in which the sentences were carried out or suspended or mitigated.

Table 22 gives the data concerning these cases in greater detail, classified both according to the type of offense (offenses against chastity, frauds, offenses against persons, etc.) and according to the disposition or result (plea of guilt, plea of guilt of a lesser offense, nolle, conviction, acquittal, etc.).

These figures relate to the cases in which the grand jury found indictments and do not include cases which, though bound over by the Municipal Court to the grand jury, were ignored or "no-billed" by the latter body and therefore ceased at that point to have further history.

"NO-BILLED" CASES

Brief special attention should be given those types of disposition of cases which constitute dropping or dismissing the prosecution without trial. In the regular order of events following the transmission of the case from the municipal to the county authorities, the earliest of these dispositions is the ignoring of the case, as it is sometimes called, by the grand jury; that is, the determination of the grand jury to find "no bill" or indictment. As appears from Table 3, this cause of extinction occurs in 21.54 per cent. of the cases—a high percentage, indicating that many cases which the Municipal Court should have discharged reach the grand jury or that many "good" cases reach the grand jury in an ill-prepared condition.

A former assistant prosecutor, who had had charge of the work in the grand jury room for several terms, states that it was usually the practice to "no-bill" cases if the witness failed to appear upon being subpoenaed, without any further investigation of the case; that about 25 or 30 cases were presented to the grand jury in the course of a morning, so that, when the case reached its

turn to go before the grand jury, if the proof was not sufficient and the case had no sensational attributes or special public attention, the prosecution was dropped then and there by means of the power of the grand jury to "no-bill" or ignore the case.¹

NOLLES AND ACCEPTANCES OF PLEAS OF LESSER OFFENSES

As appears from Table 3, 12.33 per cent. of the cases in the Common Pleas Court were, after indictment, nolle on all counts—that is, completely dropped at the instance of the prosecutor. This is exclusive of 2.60 per cent. where charges are nolle because the defendant was under sentence for some other charge or nolle after reversal by upper court or jury disagreement. These items constitute 0.59 per cent., making 15.52 per cent. of nolles in all. This is, however, exclusive of other dismissals without trial which were not technically nolles, which item constituted 3.80 per cent., making 19.32 per cent. These percentages, if calculated exclusively on the cases which began in the Municipal Court, were respectively 9.11, 2.36, and 2.80. In other words, 14.27 per cent. of the cases which had successfully passed the two preliminary examinations were later dropped.

The practice regarding nolles has always been careless. Section 2919 of the General Code of Ohio provides: "The prosecuting attorney shall not enter a *nolle prosequi* in any cause without leave of the court, or good cause shown, in open court." This presumes that the court looks into the facts carefully and exercises discretion. Actually, owing to the volume of cases passing through this court, the judge is practically de-

¹An illustration of the dangers which lurk in the "no-billing" process is furnished by the cases of Roland McGinty and Irving Schumacher. They were charged with stealing an automobile belonging to one H. M. Farnsworth. At about 1 o'clock in the morning of January 11, 1921, McGinty and Schumacher went to the garage where Mr. Farnsworth kept his car. Three hours later, about 4 o'clock, an Italian restaurant keeper in another neighborhood of the city noticed a car in front of his place of business and heard two men arguing as to which of them should go for some gasoline. The Italian called up the police station. A sergeant from the central police station came and placed both men under arrest. They proved to be McGinty and Schumacher and the car proved to be that of Farnsworth. On January 21 the case was called before the grand jury. Mr. Farnsworth voluntarily appeared and testified before the grand jury, but the case was no-billed. Thereafter Mr. Farnsworth inquired what had happened to the case and was informed that it was "no-billed" because it was understood that he did not wish to prosecute. Mr. Farnsworth states that he had never said anything to justify this inference. The "no-billing" of the case had the effect of releasing the defendants' bondsmen. The case was then again presented to the grand jury as an original case, and an indictment returned on April 15; but in the meantime the defendants had disappeared and have never been recaptured.

pendent for his information upon the prosecuting attorney. In the last analysis, therefore, the power and the responsibility are those of the prosecutor.

The statutes of Ohio do not expressly provide for the acceptance, in felony cases, of a plea of guilt of a lesser offense than that charged and, consequently, do not regulate the procedure. In actual practice the court accepts the request of the prosecutor for permission to accept such plea and is necessarily dependent on the prosecutor's statement justifying that course.

The present prosecuting attorney, Mr. Stanton, instituted a rule to the effect that no nolle shall be entered by any of his assistants without the approval of himself or his first assistant, and that the reasons for the nolle be carefully and fully stated to the court and be carefully and fully noted both on the original papers on file in the prosecutor's office and on the docket in the prosecutor's office. If adhered to, these regulations would seem to be sufficient to minimize the abuse of the nolle.

Investigation was made as to the extent to which these regulations have actually been adhered to by Mr. Stanton's office, since his incumbency on January 1, 1921, by an examination of the records and papers in the 61 cases for the period January 1, 1921, to May 1, 1921, in which the pleas of guilt of a lesser offense were accepted and in which nolles were entered. Following were the results:

Forty-eight nolles were entered, in 15 of which no notation of the reasons appeared anywhere on the papers or records. Of the remaining 33, the reason given in two of the cases consisted exclusively of the words "midst trial." In 26 of the cases the notation consisted of a reference to some other case in which the same accused had been convicted. Examination of these 26 other cases disclosed that in three of them the sentences had been suspended and in nine of them pleas of lesser offenses had been accepted. The remaining five of the nolléd cases had short but informative notations, such as "defendant adjudged a lunatic," "defendant sentenced by federal court," etc. There were 13 acceptances of pleas of lesser offenses. In 12 of these no notation whatever appears. In one of these cases the records show that the acceptance of the lesser plea occurred after a previous verdict had been set aside and a new trial had been ordered by the court. The notation in the single case in which there was a notation consists of the words "midst trial."

Obviously, these slight and irregular notations fall far short of compliance with Mr. Stanton's stated regulation and very far short indeed of the recording system required to minimize the abuse of the nolle, on the one hand, and to protect the prosecutor from unjust suspicion, on the other.

On February 20, 1920, nolle in 410 cases were simultaneously presented to the court and entered. Some of these cases had been on the dockets since 1909. There were two 1909 cases, one 1910 case, four 1911 cases, five 1912, seventeen 1913, twenty-seven 1914, thirty-four 1915. In 99 of the cases special reasons for the nolle were stated, such as conviction and sentence in other cases, war record, absence of sufficient proof. In all the remaining 311 cases the reason given was either that the defendant had never been apprehended or that the bail bond had been forfeited and the defendant had never been reapprehended.

Some dead timber will accumulate in police departments and criminal courts, as elsewhere. Nor does the duty of capturing accused persons fall on the prosecutor. At the same time, as attorney for the State, the prosecutor might well be asked to check up pending cases from time to time, and thereby stir action by the police department in neglected cases. Such an accumulation as disclosed by the blanket nolle of 1920 indicates an inefficient administration of justice. The fact that a defendant has "skipped" his bond and not been recaptured would seem to be doubtful ground for a dismissal of the prosecution. As a blanket nolle of this kind affords an opportunity to an unscrupulous or careless prosecutor to drop a case which should be tried or kept alive, the statutory rule that nolle require a leave of the court in open court cannot well be followed unless nolle be considered one at a time.

TABLE 23A.—COMMON PLEAS COURT, 1919; SENTENCES CLASSIFIED BY TYPE AND BY EXECUTION AND SUSPENSION

	Fine and costs	Im- prison- ment	Fine and im- prison- ment	Total misdemeanor sentences	Felony sentences	All sentences
Sentenced—total	297	249	152	698	904	1,602
Sentence executed	275	193	120	588	663	1,251
Sentence suspended	22	56	32	110	241	351

SUSPENSION OF SENTENCES

The statutes do not expressly authorize or regulate the suspension of a sentence, except during error proceedings in an appellate court or where the accused is placed on probation. As a matter of practice, suspensions are not so limited and the practice is exceedingly loose. The term "bench parole" is popularly given to suspension of sentences made by the trial court. They are sometimes given without consultation with the prosecutor, who, even when informed of the request for a suspension, does not,

as a rule, protest or offer any argument on the question. Apparently he conceives his responsibility terminates with the original sentence except where the court specially requests information or action by him.

TABLE 23B.—COMMON PLEAS COURT, 1919; SENTENCES CLASSIFIED BY TYPE AND BY EXECUTION AND SUSPENSION; PERCENTAGES

	Fine and costs	Im-prison-ment	Fine and im-prison-ment	Total misde-meanor sen-tences	Felony sen-tences	All sen-tences
Sentenced—total	100.0	100.0	100.0	100.0	100.0	100.0
Sentence executed	92.6	77.5	78.9	84.2	73.4	78.2
Sentence suspended	7.4	22.5	21.1	15.8	26.6	21.8

Tables 23A and 23B give the statistics as to the relative execution and suspension of sentences in the 1919 cases, classified according to de-

TABLE 24A.—COMMON PLEAS COURT, 1921; SENTENCES CLASSIFIED BY TYPE AND BY EXECUTION AND SUSPENSION

	Fine and costs	Im-prison-ment	Fine and im-prison-ment	Total misde-meanor sen-tences	Felony sen-tences	All sen-tences
Sentenced—total	18	45	12	75	155	230
Sentence executed	12	42	8	62	126	188
Sentence suspended	6	3	4	13	29	42

gree of sentence. Tables 24A and 24B give similar information relative to the sentences imposed in the first three months of 1921.

TABLE 24B.—COMMON PLEAS COURT, 1921; SENTENCES CLASSIFIED BY TYPE AND BY EXECUTION AND SUSPENSION; PERCENTAGES

	Fine and costs	Im-prison-ment	Fine and im-prison-ment	Total misde-meanor sen-tences	Felony sen-tences	All sen-tences
Sentenced—total	100.0	100.0	100.0	100.0	100.0	100.0
Sentence executed	66.7	93.3	66.7	82.7	81.3	81.7
Sentence suspended	33.3	6.7	33.3	17.3	18.7	18.3

In paroles properly so called,—that is, the parole of prisoners by the authorities entrusted by law with parole powers,—the practice is for the paroling board or officer to ask for an opinion from the prosecuting attorney. This opinion is given without further effort on the part of the prosecutor to promote or obstruct the parole.

THE BAIL BOND

When a case is initiated by an indictment by the grand jury, followed by arrest, the accused is confined in jail unless he gives a bail bond to secure his appearance at trial. When a case comes through the Municipal Court, the bond given there remains in effect until an indictment has been found and the defendant arraigned for plea, and, if he pleads not guilty, another bond must be given to secure his appearance at the trial. If, in either class of case, the trial results in conviction and the defendant appeals, another bond must be given to secure his surrender if the judgment of conviction be affirmed. Neither the amount of the bond nor the qualification of the surety is determined by the prosecutor, though he has or can take the power to influence the decisions on these points.

It is his duty to watch the proceedings, have the defendant promptly arrested if the bond is not given, and have the bond promptly forfeited if the conditions thereof are broken. Until the passage of the recent statute regulating the procedure, it was also his duty to enforce forfeited bonds in all State cases, whether the bond was given and forfeited in the municipal or county court.

The records show a woeful laxity in the performance of these duties.¹

¹ A recent illustration of the prevalent laxity in this matter is furnished by the bond enforcement case of *State of Ohio v. George Poulley and M. L. Bernstein* (No. 180756 of the Common Pleas Civil Docket). The petition was filed July 1, 1920. The petition sets forth that an affidavit was filed in the Municipal Court on July 26, 1915, charging the defendant, George Poulley, with violating the liquor law; that on August 10, 1915, the defendant was found guilty, and on September 15, 1915, a bond was given by George Poulley, with M. L. Bernstein as surety, conditioned upon Poulley's prosecuting his petition in error in the Court of Appeals without unnecessary delay; that, as a matter of fact, Poulley never filed a petition in error in the Court of Appeals; that on June 12, 1920, Bernstein was called upon to bring the defendant into court, and upon failing to do so, the bond was forfeited. Bernstein was served with summons on this petition, the return of the summons made July 10, 1920. Poulley was not found. On October 27, 1920, the defendant was given leave to plead *instanter* and he filed his answer on the same date. The bond was permitted to sleep four years and nine months before being forfeited. For over two months the prosecutor overlooked the opportunity to take a default judgment on the bond.

On March 26, 1921, the case came before Judge Y., and the following entry

The following is taken from pages 61 and 62 of the report of the Cuyahoga County Examiner of the Department of Auditor of State, Bureau of Inspection and Supervision of Public Offices:

The examination discloses that practically all services in connection with the taking of recognizances for appearance in criminal cases during the period covered by this examination have been conducted as matters of mere formality, and so far as the records and files disclose the fact that the object of such a recognizance is to safely insure the appearance of the accused for trial, has received little if any consideration.

What has been said of the taking of the recognizances also applies to all services performed in connection with the forfeitures and collection of same, as if readily verified by the following data taken from the records of the Common Pleas Court, to wit:

P. 61

- Case No. 11272. Frank Hebole. Robbery. January 16, 1919, bond forfeited; no record of bond ever having been given.
- Case No. 13902. John W. Brown. Pocketpicking. Bond forfeited January 16, 1919. No bond ever given in Common Pleas Court and none included in transcript.
- Case No. 11465. Arthur Purnell. Burglary and larceny. Bond forfeited January 16, 1919, but there is no record of bond ever having been given.
- Case No. 13498. Z. Barker. Issuing check to defraud. Bond forfeited February 12, 1919. No bond ever given in this case and the defendant was never apprehended.
- Case No. 13820. John Soheat. Carrying concealed weapons. Bond forfeited January 16, 1919. Entry in docket of June 11, 1918, shows bondsman relieved of further responsibility.

That in several instances over two years had elapsed from the time a recognizance was taken until the same was forfeited.

That recognizances had been forfeited for a period of two years prior to having been reported to the county auditor or delivered to the prosecuting attorney.

That suit on forfeited recognizances had been entered for a period of two years prior to judgment being rendered.

That from one to seven continuances had been granted in many suits brought to recover judgment on forfeited recognizances.

P. 62

FORFEITED BONDS

The following is a recapitulation of the results obtained in making an examination of the bonds given as security for the appearance in court of persons

appears upon the docket of the court: "Judgment for plaintiff for costs. Forfeiture, delayed five years, deprived defendant of opportunity to make effort to have George Poulley apprehended."

charged with the violations of the criminal statutes, and forfeited in cases of their failure to make such appearance:

Total amount of bonds forfeited from August 26, 1916, to May 27, 1919.	\$263,400.00
Total judgment rendered on forfeited bonds from August 26, 1916, to May 27, 1919.	59,262.28
Total amount of bonds sued upon cases pending.	100,300.00
Total amount of judgment on forfeited bonds collected from August 26, 1916, to May 27, 1919.	2,701.53
(\$1,100.00 of this amount was collected on judgment rendered prior to the period covered by this examination)	
Total costs incurred in suits brought on forfeited bonds from August 26, 1916, to May 27, 1919.	1,680.65
Total costs in suits on forfeited bonds collected from August 26, 1916, to May 27, 1919.	439.10
Total amount of judgments on forfeited bonds upon which no executions have been issued from August 26, 1916, to May 27, 1919.	13,885.00

The preceding statement disclosed that the amount of judgments collected on forfeited bonds during the period covered by this examination, as compared with the amount of bonds forfeited, shows that but three-fifths of a cent is collected for every dollar forfeited; that the cost of collection is equal to the amount collected, not taking into consideration the salaries of the officials performing services in connection therewith, and that there is little if any effort made to issue executions on judgments rendered.

The statutes provide ample means for the elimination of the condition disclosed in connection with this subject, and the public officials who are by statutes vested with such power owe it to the community and themselves to use the authority so granted to make immediate correction of same.

While this survey was in progress the Ohio legislature passed a new statute regulating bail-bond procedure in Cuyahoga County. It has just gone into effect (July, 1921). It creates the position of bond commissioner appointed by the presiding judge of the Court of Common Pleas. This official succeeds to the function of the municipal and county court clerks in passing on the qualification of sureties. The statute prescribes in some detail regulations concerning the records of defendants in criminal cases and qualifications of sureties; such regulations could, however, have been put into effect in the past by rules of court or by the actual practice of the court clerks.

The statute transfers to the bond commissioner the duty to enforce forfeited bonds. This means a more divided responsibility than hereto-

fore, and is in line with customary American practice of creating a new office to take over the duties which existing officials have habitually neglected, instead of providing existing offices with the type of men and office organization adequate for the work which logically belongs to those offices. In the last analysis it will be the duty of the prosecuting attorney to enforce the faithful performance of the bond commissioner's duties.

The new statute contains, however, at least two very valuable reforms. It makes the obligation of the bail bond a lien on the real estate of the surety from the date of the bond, and provides for the recording of these liens; and in actions on forfeited bonds it prohibits the court from giving judgment for any sum less than the full amount of the bond, except in cases in which the original defendant has surrendered or been recaptured.

CASES IN THE APPELLATE COURT

About 13 per cent. of the contested cases which result in convictions are taken to the Court of Appeals on questions of law. The decisions of this court have an important bearing on the interpretation of the criminal laws and the validity of effective methods of law enforcement. In the interests of justice the man who carries his case to an upper court should not receive any undeserved and avoidable advantages from delays or technicalities. The protection of the public's side of these cases in the appellate courts forms, therefore, an important duty of the prosecutor.

One of the judges of the Court of Appeals complained that the prosecuting attorney failed habitually to file briefs in these cases. An investigation of the basis for this charge was made, with the following results:

In the 76 cases filed and concluded in the years 1919 and 1920, briefs had been filed by the prosecutor in only 20. The plaintiff-in-error failed to file a brief in 22 cases. Eliminating these, on the principle that the prosecutor is not called upon to file a brief until his opponent's brief is filed, these records show that the prosecutor filed a brief in only 20 out of the 54 cases. Of the 76 cases, eight were dismissed for lack of preparation and eight for other reasons. Of the remaining 60, the conviction was affirmed in 44 and reversed in 16. In the 16 reversed cases no briefs were filed by either side in one case, while in the remaining 15 the prosecutor had filed briefs in four and failed to file briefs in 11. Taking the 60 cases in which the convictions were affirmed or reversed, the prosecutor lost 6.66 per cent. of them when he filed briefs, and three times as many, or 20 per cent., when he failed to file briefs.

CHAPTER VIII

THE FEDERAL COURT AND UNITED STATES ATTORNEY

COMPARISON IS POSSIBLE

THE administration of justice in the federal courts does not fall within the scope of this survey. For purposes of comparison, however, some inquiry has been made into the actual workings of the enforcement of the federal penal laws. By reason of the relatively small scope of federal penal law as compared with the State and municipal criminal law, and the relatively specialized nature of the offenses which come into the charge of the federal authorities, the task of the federal judge, when he sits in the criminal branch of the court, or of the federal prosecuting attorney, does not present all the complexities and difficulties faced by the county and municipal officials. If, however, within its field, the administration of the federal criminal law in the same city presents a picture of relative orderliness, efficiency, the accomplishment of its ends, and the enlistment of public confidence, surely there are lessons implicit in these results which must not be neglected.

The following summary gives the results of the federal criminal cases in the Northern District of Ohio (the federal judicial district, which includes Cleveland) for the year ending June 30, 1920, as reported to the Attorney General of the United States and included in his 1920 report. The fiscal year for which these reports are made runs from June 30 to June 30, and the year July 1, 1919, to June 30, 1920, furnished the official statistics nearest to the year of the county court tabulations in this report. The population of this district according to the census of 1920 was 3,195,651.

	<i>Total</i>
Pending at close of June 30, 1919	277
Commenced during fiscal year	1,140
Terminated during same period	967
Convictions	794
Acquittals	11
<i>Nolle prosequi</i> or discontinued	156
Quashed, dismissed, demurrer, etc.	6
Pleas of guilty	761
Trials by jury	44
Pending at close of June 30, 1920	450
Fines, etc., imposed during year	\$131,327.06
Realized on fines, forfeitures, etc.	\$106,977.62

Comparing these results with those in the county courts, the differences are striking. For instance, the percentage of pleas of guilt in the federal cases terminated during the year is 78.7 per cent. In the felony cases in the county courts (Table 3) pleas of guilt were obtained in 37.02 per cent. of all the cases; or, if cases of acceptance of plea of a lesser offense be eliminated, pleas of guilt of original charge were obtained in 30.38 per cent.; or, eliminating cases bound over to the grand jury but in which no indictment was found, there the percentages were 47.1 per cent. for all pleas of guilt and 38.7 per cent. for pleas of guilt of original charge.

Of the 967 cases terminated during the year, the federal authorities found it necessary to try only 44 cases, or 4.55 per cent., of which 75 per cent. resulted in convictions; whereas the 590 trials in the county cases represented 23.2 per cent. of all cases terminated during the year, with convictions in 62.2 per cent. 16.7 per cent. of federal cases disposed of during the year were nolle or otherwise dismissed without trial, whereas 41.01 per cent. of all State cases were dropped and 24.8 per cent. of the indicted cases were nolle or otherwise dropped.

These figures indicate a relatively high efficiency in the federal administration in the preliminary stages of sifting out of the cases and preparing them.

The Southern District of New York (composed chiefly of the original city of New York—Manhattan) is the busiest of the federal judicial districts and has nearly as many penal cases as the Cuyahoga County courts. As reported in the 1920 report of the Attorney General, in the year ending June 30, 1920, there were 1,879 criminal cases terminated in that district, of which 1,160, or 61.7 per cent., resulted in pleas of guilty, and 1,221, or 65 per cent., resulted in convictions.

Federal cases, like State cases, can be begun in the grand jury or in a court of preliminary examination, namely, before a United States Commissioner. The United States Commissioners undoubtedly keep some dockets or records of their own, but no dockets or records of the pendency of cases before commissioners or of the dispositions there are kept in the Cleveland district in the offices of the United States Clerk, and there are no official statistics of the history of cases in stages preceding the action thereon by the grand jury.

The United States Attorney's office in Cleveland keeps a book entitled "Complaint Docket," in which is recorded or presumed to be recorded the disposition previous to or by the grand jury of all cases which reach the stage of presentation to a commissioner. This book covers the Eastern Division of the Northern District of Ohio, which

division includes Cleveland. The results of the tabulation of the cases for the year ending June 30, 1920, as disclosed by this book, are stated in Table 25.

TABLE 25.—SUMMARY OF CASES ON THE "COMPLAINT DOCKET" OF THE UNITED STATES DISTRICT ATTORNEY FOR YEAR ENDING JUNE 30, 1920

Total cases in complaint docket.....	1,717
Cases which did not reach grand jury.....	263
Dismissed by commissioner.....	65
Transferred to other district.....	19
No entry ¹	175
Miscellaneous.....	4
Presented to grand jury.....	1,454
Presented direct.....	84
True bills.....	47
No bills.....	10
Not presented.....	2
No entry.....	25
Presented after binding over by commissioner.....	1,370
True bills.....	1,166
No bills.....	104
No entry.....	100

A case heard by a United States Commissioner cannot be finally tried and sentence imposed unless an indictment be found by a grand jury. Where, therefore, a case is first presented to the commissioner, there is the same sort of double preliminary hearings as in State cases. The accumulation of detail and drain upon facilities, human and otherwise, which this entails has caused the United States Attorney for the Southern District of New York, where the volume of work has increased rapidly, to use predominantly the process known as information, as distinguished from indictment, and thereby avoid the preliminary hearings before the commissioner. By means of this process of information a prosecutor can, within certain statutory restrictions and in cases that do not involve "infamous crimes," take a case directly to the trial court and jury. Francis G. Caffey, until recently United States Attorney for that district, states that most of the prosecutions are on information and that, except for the issuance of warrants, arraignments, fixing bail, and like formalities, comparatively little use is made of the commissioners, and that only occasionally is there a preliminary hearing before a commissioner.

¹ "No entry" signifies that the docket failed to specify the disposition. It may not be amiss to venture a warning that, with the growth of the quantity of federal penal cases due to federal liquor legislation and the other extensions of federal criminal law, the quality of the administration of federal criminal justice will deteriorate unless care be taken to keep the record and statistical system and other instrumentalities abreast of this growth.

As appears from Table 25, this development has not yet taken place in Cleveland, where the two hearings are held in a large majority of the cases. But even where this is true there is a striking contrast between the State and federal administration, in that a federal case is handled from beginning to end by the same prosecuting attorney's office, the United States Attorney and his assistants having charge of the case before the commissioner, the grand jury, and the trial jury; and, furthermore, the investigating and detecting machinery is a branch of the same department as that to which the United States Attorney belongs, namely, the Department of Justice. The Bureau of Investigation (corresponding in its functions to the detective branch of the police department) proceeds in its investigations under the direction of the United States Attorney. There is thus brought about a unity and continuity of method and responsibility which are absent from State cases. The procedure and atmosphere of the federal criminal courts are orderly and dignified, showing there is nothing intrinsic in the nature of criminal trials which makes disorder and lack of dignity unavoidable.

CHAPTER IX

THE LESSONS AND THE REMEDIES

GENERAL CONSIDERATIONS

THE facts of the situation suggest the remedies for the evils and inadequacies that have been revealed. In order, however, to propose changes, there must be some standard assumed toward which we are working. The proper road cannot be pointed out without some information as to where the traveler desires to go. What may we ask of the administration of criminal justice in any community?

The answer is obvious. The administration of justice should be free from corruption of any kind and be certain and expeditious. Its organization and operation should be such that, without any avoidable delay, the innocent are cleared of the charge of crime and the guilty discovered and punished. In so far as current methods and practices tend to avoidable delays, give avoidable opportunities for favoritism and other forms of corruption, unnecessarily increase the elements of chance or luck, produce indiscriminate results instead of, in the ordinary course of the day's work, a fair degree of justice, as and in accordance with the methods provided by law, to that extent the administration of justice falls below the most elementary and acknowledged standards.

As tersely stated by Victor Cousin and quoted by Burdette G. Lewis in his book, "The Offender," "Punishment is not just because it deters, but it deters because it is felt to be just."

This "felt to be just" brings out another aspect of the problem, the importance of that which may be called the appearance of the administration of justice. Not only must justice be done in the ordinary course of the day's functioning, but the work of the criminal courts and prosecutors should have the appearance of doing justice. The aspect of things should be such as to cause the community to feel confident that the guilty will be discovered and punished and the innocent will be freed. Men whose situation might tempt them to commit crime may be deterred by the feeling that the chances of discovery and punishment are relatively certain. Men who feel criminally inclined, whose tendency is to enter a career of crime as a source of livelihood, would

be more likely to go ahead in this career if the administration of justice in the community is a game of chance in which the odds are in their favor.

Not that the administration of justice is to be conceived as a machine, a Frankenstein, operating without heart, sympathy, discretion, or discrimination. But the fundamental American principle of justice according to the law is based on the conviction that men should be governed by general rules applied to the particular facts of each man's situation and not by the surmises, caprices, or prejudices of other men. The rules, whether legal or scientific and no matter how thoroughly and carefully developed, will always leave plenty of room for the play of the judge's common sense and sympathies.

Many people have a sort of vague feeling that a helter-skelter administration of justice, without careful ascertainment of facts or careful application of the laws, somehow produces a more desirable mixture of justice and humanity than is produced by the more orderly and careful trial methods. This is a complete fallacy. The whirligig too often snatches up the innocent or those who merit leniency and hurls them into punishment without giving them the time or opportunity to demonstrate their innocence or grounds for dealing leniently with them.

Therefore the organization, methods, and practices of the criminal courts and prosecutors and other agencies engaged in the administration of criminal justice should be such as to function with as great an exactitude as is possible in an apparatus of this nature and with a reduction to a minimum of the opportunities for favoritism, corruption, prejudice, luck, and carelessness. The procedure needs to be simplified so as to reduce as far as possible the number of steps or stages in which corruption, carelessness, or incompetence can play a part or which unnecessarily strain the resources, human and inanimate, devoted to the enforcement of the criminal law.

The present situation is to a considerable extent the result of the fact that in its prosecutors' offices Cleveland, like most American cities, is furnishing and supplying an apparatus disproportionate to the job on hand. Our public law offices have failed to institute modernized methods of office organization characteristic of the larger private law offices.

As the ability and character of prosecutors, judges, clerks and other officials, and of defendant's attorneys necessarily constitute so important a factor in the results, criminal practice needs to be given such a prestige as to attract and hold men of ability and character, and the prestige of the administration of criminal justice must be consciously promoted.

Our problem is, therefore, to suggest changes, easily obtainable and

available, which will effect such organization, methods, practices, and prestige.

Many of the reforms suggested require merely the will to change—they can be effected by change in habits, manners, and customs; others will require amendments of court rules; others, amendments of city ordinances or the city charter; still others, amendments of Ohio statutes; an amendment of the Constitution of Ohio will be requisite to carry out at least one of the recommendations. Cleveland lawyers will know which of these modes of amendment will be necessary in each case, and whatever groups or agencies seek to produce any of these changes will easily ascertain the necessary type of legislation. This report will not, therefore, be burdened by pointing out, as each recommendation is discussed, either the particular class of legislation or the detailed provisions of such legislation.

THE MUNICIPAL PROSECUTORS

The chief municipal prosecutor should be primarily an executive official, qualified by the kind of capacity and experience which makes an efficient executive of a large and important organization. It should be his province to assign the various subdivisions of the work of his office among his subordinates and to formulate and enforce the methods, practices, and regulations governing the work. He should map out, establish, and maintain the proper coördination between his office and that of the county prosecutor, between his office and the courts, between his office and the police department. The establishment and maintenance of standards in the methods of handling cases and interpretations of the law also fall within his province. As the head of the office, he should establish and maintain regular, systematic, and effective check upon the work of his subordinates and upon the work of the clerical and the other divisions of the Municipal Court. Moreover, he ought to make himself a leader for the community in matters relating to the administration of criminal justice in the Municipal Court. As long as he has his present jurisdiction, including the preliminary examination in all State cases, he is one of the two or three most important officials in the city of Cleveland; and even if, as recommended later in this report, the charge of State cases from the beginning be transferred to the county prosecutor, the chief municipal prosecutor will remain one of the most vital city officials and second only to the county prosecutor in the domain of law enforcement.

Probably the second most important position, and one which should be established without delay, is that of managing clerk, whose functions

would correspond to those of a managing clerk in a large modern law office. The duty of this official would be to keep the office working smoothly, in accordance with rules, regulations, and standards fixed by the chief prosecutor. He and his assistants would sift out the visitors and applicants at the office, so as to turn away those who have no business there and assign the others to the chief prosecutor, the assistant prosecutors, and the other officials in accordance with the specialization of work determined by the chief prosecutor. Furthermore, the managing clerk should act as the custodian and clearing-house of records, papers, and files of the office. The fixing of responsibility for the care and transmission of affidavits and other papers will help remove the danger of the loss of papers. Under the direction of the managing clerk should be the clerical department, with such clerks, stenographers, and messengers as may be needed to carry out the organization here outlined.

The subdivision of work among the assistants follows logically from the different types of activity involved and different classes or grades of offenses. For example, there is the distinction between cases brought to the office by persons other than the police and involving the informal conciliation which has been described, and cases brought in by the police. This could form the basis of one subdivision of the work. Some cases involve work of preparation outside of the office, which should be assigned to special assistants. The trial of the cases, also conducted outside of the office, forms a logical subdivision of the activities of the assistants. Cases differ in grade and kind—municipal cases, which represent violation of order, safety, and health regulations and involve neither vice nor criminal motive; municipal vice cases, as gambling and prostitution; state misdemeanors and state felonies. By means of specialization of this kind, office congestion will be reduced, just as street congestion is reduced by the specialization of the uses of the different streets as between pleasure, commercial, and industrial uses or heavy and light traffic. Each assistant will become expert in his work. The present system, or lack of system, whereby each visitor picks out his own assistant, produces congestion and avoidable opportunities for favoritism. In so far as it has any design at all, it may contemplate that the Italian visitor will seek out the Italian assistant, the Polish visitor the Polish assistant, and so on. This is, however, one of the things which Cleveland must eliminate. This tribalization of law enforcement is a species of corruption. The great immigrant population of Cleveland should be made to realize, and will probably be quite happy to realize, that justice in Cleveland is an American justice, and that no special favors are obtainable and no special punishment will be administered because the

complainant or the defendant or the prosecutor belongs to one tribe or race or another.¹

With so great a number of cases, the municipal prosecutor cannot keep pace with his duties and avoid the inefficiencies and wastes of congestion unless the operation of the office be fairly continuous. The present method of progress resembles the system in use for carrying logs down a wilderness stream, namely, an alternation of jams and drifts. This primitive method may have some justification in the transportation of logs through a wilderness, but is hardly appropriate to the prosecutor's office in a large American city. Even in the case of the logs some of the good ones get stranded along the shore. The lumber industry has evolved the log-picker, who goes back along the route and picks up and delivers these strays. The administration of justice has not evolved an analogous official.

Within the limits of reasonable practicability, the output of the office, so to speak, should be continuous, meaning thereby that the various types of work involved—investigation of facts, preparation of affidavit, preparation for trial and trial—should be continuous, each assistant or set of assistants assigned to these divisions of the work working throughout the working hours of the day. As arrests are made during the night and some of these night arrest cases will be on the Municipal Court docket the following morning, the investigation of facts and preparation of affidavits should, to some extent, proceed during the night, special assistant or assistants being assigned for that purpose. The notations and memoranda incident both to the sifting out of the cases and the preparation of those which are to be tried ought to be thorough and "routed" within the office, and filed so as to be at hand when and where needed. Not that the work should become purely mechanical—in fact, too much of it is mechanical now, in the sense of being without the exercise of human judgment and discretion. The system in a modernized business organization does not render the work of the chief executive and his assistants more mechanical. On the contrary, it frees them for more thought, originality, judgment, and efficiency.

The question immediately arises as to how many additional assistants may be needed to carry out a program such as here outlined. That number cannot be prophesied nor calculated in advance. The appropriate number will be a development of experience. The introduction of an improved system in any office always opens up the pos-

¹ Language difficulties can be easily cared for by a proper system of interpreters.

sibility of handling a greater volume of business without added force, and the chief prosecutor will be surprised how much more efficient work he will obtain from his present force with a good office system. Furthermore, the present agitation on the subject of crime and the making of this survey are based to some extent upon the feeling that the orderly, honest, and capable administration of criminal justice will itself reduce the amount of crime; and there is scientific justification for that feeling. If the recommendation discussed in a subsequent chapter, namely, that the county prosecutor be put in charge of all State cases, be carried out, the volume of the work of the municipal prosecutor's office will materially decrease. Until that is done, some increase of the number of assistants will, no doubt, be necessary. Just a few days before the writing of this report an additional assistant was authorized and appointed. Without, however, a supply of increased, adequate, and well-arranged office space, and the establishment of an adequate clerical force and office and record system, the mere increase in the number of assistants will not increase the efficiency of the work and will probably tend to intensify many of the defects which have been described. The new assistant will add at least one more person to the office jam; and six officials whose information and whose activities are unfiled, unrecorded, unwritten, and unknown are probably better for the community than seven.

THE COUNTY PROSECUTOR

In the county prosecutor's office, the filing and clerical work and the disposition of visitors should, under the newly created managing clerk, be managed as befitting a large modern law office.

But, above all, the prosecuting attorney himself should be the executive of his department. It is his function to systematize activities of the office, assign the distribution of work among his assistants and subordinates, formulate and enforce the rules, regulations, practices, and methods of the office, and exercise a supervision and control over all the persons and facilities of his office so as to produce standards of efficiency in harmony with his policies. His activities and power as an executive ought to extend beyond the precincts of his immediate office. Through his duty to enforce, in his county, the criminal law of the State he is best fitted to be the chief executive of the administration of criminal justice. He should bear to the administration of criminal justice in Cuyahoga County the same relation which the Attorney General of the United States bears to the administration of the federal penal law. It is his function to coordinate the work of his office with

that of the police department, the municipal prosecutor, the clerks of the courts, and the courts themselves. By reason of his responsibility for the presentation and trial of cases, and his right to investigate into and prosecute the malfeasance or non-feasance of other public officials, it is his function to watch the work of the police department, county and Municipal Court clerks, and all other persons with duties connected with the enforcement of the criminal law, and thereby guard against the failures of law enforcement due to official neglect or corruption. The law enforcement department of the public service, possibly the most vital of all activities of government, with its tremendous quantity of detail, its specialization and subdivision of labor, its adjustments between these subdivisions, its adjustments with the public—requires concentrated executive direction and responsibility. This direction and responsibility rest with the prosecuting attorney. More than that, the prosecuting attorney should be the leader in this field, the man who thinks through and originates policies and methods. Today it is too often the case that the prosecutor permits himself to be carried hither or thither by alternating currents of public cruelty or public sentimentality or blown about by gusts of popular or press excitement. He should be the captain who steadies the boat and at the same time discovers new or improved routes to the havens of public order, security, and morals.

MUNICIPAL COURT PROCEDURE

The arrangement and subdivision of work in the municipal prosecutor's office must necessarily dovetail into the procedure of the Municipal Court. The full benefit, for instance, of assigning specific classes of cases, such as city misdemeanors and state felonies, to specific trial assistants could not be obtained if these various classes of cases be thrown indiscriminately into the same morning's court docket. Careful preparation of a case would become partly wasted effort if the court procedure be so hurried as to give no opportunity for presenting the case well. These examples illustrate the necessity of some reforms in the court procedure if the prosecutor's office is to be made an efficient instrument, and the justification for some discussion of these reforms here, though the subject of the courts forms a separate division of this survey.

The court calendar is now based upon the jam and drift method. There is an overcongested calendar for a short period of the day, and then drift the remainder of the time. The time given to trial of cases should be sufficient to enable them to be heard in a manner befitting

cases which involve the lives, liberties, and reputations of human beings. Each case should be as thoroughly presented and in as orderly a manner as the proof requires and the legal and factual issues justify.

The Segregation of Trials or Calendars

We have seen that most of the time the trial prosecutor stands around with nothing useful to do. His single routine question to the prosecuting witness, "What do you know about this case?" could easily be propounded by the judge. The time and ability of the prosecutor are wasted by this sort of procedure; and with a situation which cries for so much useful activity, this waste is inexcusable. If, therefore, there are classes of cases which normally can be as effectually tried without the presence of the prosecutor, those cases should be segregated upon the court calendar so as to release the prosecutor for service elsewhere.

On every indiscriminate calendar, composed of cases of every degree of importance and difficulty, there are many cases sufficiently clear and simple to warrant speedy and summary trial. The trouble is that these cases set the pace, and by a process of contagion affect the conduct of cases which merit a more patient inquiry into the facts and law, and the whole calendar tends to be given this hurried, inadequate, slipshod treatment.

Arthur C. Train, with long and varied experience as prosecutor in New York city, in his book, "The Prisoner at the Bar," describes the harmful effects of this hurly-burly method of calling and disposing of cases in police court. Speaking of the New York Police Court previous to its reorganization, he gives an analysis largely applicable to present-day Cleveland:

"The inordinate number of cases which the magistrates have to dispose of results oftentimes in an inconclusive method of hearing charges of misdemeanors or of felonies, which, if the defendant be held at all, must of necessity be tried in a higher court or, as the magistrates say, 'go downtown.' If the defendant be a man of some influence, with money to retain a boisterous and bully-ragging lawyer, the line of least resistance may lead the judge almost unconsciously to regard the case as having 'nothing in it.' If, on the other hand, the complainant be a man of independence and insistence, without perhaps a bit of pull, it is much easier to 'hold' a defendant than to assume the responsibility of 'turning him out.' In point of fact some magistrates are prone to shift the responsibility off their own shoulders and to 'hold' anyway. Thus there can be 'no kick coming' so far as they are concerned. There are also cases where, rather than take the time for a careful examination of the case, the magistrate will 'hold,' when,

if he had really examined into it with the necessary care, he would find that there was no reasonable ground for his action. Now the grand jury is apt to find an indictment almost as a matter of course, and the defendant must then be placed on trial before a petit jury. In large measure this is the reason why the calendars of the criminal courts are crowded with cases which should never have gone beyond the police court, and why prisoners charged with homicide often lie for months in the Tombs before the petty business of the general sessions can be cleaned up sufficiently to allow time for their trial. In this way much of the work which should be done by the police judge is cast upon the already overburdened petit jury. The evil, however, does not stop there. When a petit jury finds that a majority of the cases brought before it have little or no merit, it frequently gets the idea that all criminal business is of the same character and that it is impanelled for the purpose of a general jail delivery. After a jury has 'turned out' 20 men in succession it can hardly be blamed for thinking that the twenty-first, who may be a real sinner, ought likewise to be sent home with the others to join his family. Respect for law cannot be maintained unless each part of the machine of justice does its full duty and assumes its own burdens and responsibilities" (p. 56).

There is slight practical difficulty in classifying the cases according to gravity and according to normal or habitual difficulty of proof. The statutory classification of city and state misdemeanors and state felonies is one basis, and the prosecutor can more successfully distribute these classes among his assistants if the court calendars followed a similar segregation, so that hearings of state felonies, for example, be set in a designated court-room at a designated time, and similarly for the other classes. Within these general classes, particularly state and city misdemeanors, there are types of cases, as, for instance, violations of local traffic ordinances, which normally present simple issues of fact or law and require little time, and others, such as larceny and fraud, which, being generally committed in a secretive or concealed manner, usually involve difficulties of proof and require more time for trial.

A segregated docket, separating the times or places of trial of cases which do not require the presence of the prosecutor from those which should be conducted by him, of city from state cases, state felonies from state misdemeanors, and, within these classes, cases normally triable in a summary or speedy fashion from those where justice demands less speed, would enable the prosecutor to obtain the most efficient results from the work and the ability of his assistants and make thorough preparatory work useful and effective. The appropriate importance of each case would stand out better if the case be upon a calendar devoted to cases of a certain degree of gravity than is possible in the present indiscriminate commingling. The disadvantages of keeping lawyers for the defense and

witnesses waiting around would be reduced. There would be brought about an atmosphere of orderly and open administration of justice. Not the least important consequence would be to enhance the attractiveness of criminal practice and to encourage the better equipped and finer grained type of lawyer to accept service in criminal cases. The changed tone would react upon the accused, witnesses, and spectators; they could hear, see, and understand what is going on in the court-room. The result would be greater public confidence in the administration of justice.

The preparation of a segregated calendar as above outlined is, of course, a task of some difficulty, especially as certain complicating considerations have to be taken into account, such as the rest-hours of police officers who are on night service, the reduction of the time of confinement of defendants who cannot give bail, and other illustrations which will occur to those familiar with police courts. But the difficulties are not great and can be easily overcome by the willing coöperative action of a chief justice, prosecutor, and clerk of fair ability. The general principles and considerations are clear and simple, and there is no necessity for setting out here a detailed schedule of all the types of offenses, classifying each according to its appropriate place on such a calendar. A few illustrations will suffice. There are municipal cases, such as intoxication, street soliciting, suspicious person, ordinary traffic cases, in which the police officer makes the arrest on the spot on the basis of what he sees and in which there is rarely any issue of law or any issue of fact requiring investigation outside the police records. In such cases the whole prosecution consists of the testimony of the police officer, and there is nothing for the prosecutor to do. These cases should occupy a special part of the calendar. If, in any of them, there develops a situation or issue which the court believes to warrant the prosecutor's attention, the court could place the case on that part of the calendar for which the prosecutor will be needed.

Then there are cases of violations of both city and State regulations, such as smoke abatement, tenement house and other building regulations, in which the proof is prepared by the health or factory or building department or inspector and he is quite capable of presenting it. If the department has a case which requires the establishment of an important point of law, or an aggressive campaign against an habitual or arch offender, it could take the matter up specially with the prosecutor, who could have the case put upon a calendar for which the appropriate trial assistant will be in court.

Keeping houses of ill fame, gambling offenses, pocketpicking, are examples of municipal misdemeanors which generally involve either an

issue of law or some difficulties of proof and which, therefore, normally require preparation on the part of the prosecutor and belong on that part of the calendar devoted to municipal cases with prosecutor present. Each of these may be expected to use considerable time. Larceny, assault, receiving stolen property, carrying concealed weapons, and liquor offenses are examples of state misdemeanors requiring similar treatment. In fact, most state misdemeanors, excepting violations of some State license and inspection regulations, automobile speed cases, and others in which the whole case is the report of a police officer or public inspector, fall within this same class.

Arrest and Summons

Under the present practice the process of arrest is the form of process by virtue of which jurisdiction is obtained in every case of every nature and the accused is brought into court. This is partly responsible for the present conglomerate calendar. As the arrested person must be confined in jail or give bail, it is only fair that he have, as his day in court, the next nearest court session, namely, the following morning. Almost every arrest involves the labor of bringing the accused to a police station and confining him or arranging for bail, all of which adds to the clerical labor incident to the keeping of police and court records. A large percentage of the new cases each morning are not ready for trial and continuance is allowed, involving the clerical details of entering the continuance on each of the records and reentering the case on the later docket. With the enormous work thrown upon the administration of justice, every labor-saving device which does not harmfully affect the administration should be adopted.

Obviously, the summary process of arrest is designed to prevent escapes. It is a process appropriate to those classes of offenses, such as felonies or misdemeanors, with a motive which may strictly be looked upon as criminal (larceny, pocketpicking, suspicious person, carrying concealed weapons, etc.), or misdemeanors of the nature of habitual or commercial vice (keeping house of ill fame, gambling, etc.), which are usually committed by those professionally engaged in these offenses, or by persons who are transient sojourners in the city and migrate from town to town, or persons of erratic occupation or low and uncertain social status, and who, therefore, are under greater inducement to escape than to appear and stand trial.

The field of criminal justice in the modern American State and city has come to include, however, a large number of misdemeanors committed by persons who are permanent residents, engage regularly and

habitually in a lawful occupation, have respectable friends in the city and a social status worth preserving, and for whom departure from the city would be a greater punishment than that provided by law for the offense. Sunday ordinances, violation of health, smoke, building, and nuisance ordinances, traffic cases not involving injury to persons, license ordinances, are examples of municipal misdemeanors of this type; automobile offenses not involving injury to persons or theft, labor, health, building and factory regulations, laws regarding minors, license laws, election laws, are examples of state misdemeanors. The use of the process of arrest in such cases is a waste of effort and an unnecessary drain on overburdened resources. The process of summons, such as is used in civil cases, would be just as effective. A summons is served on the defendant notifying him to appear in court at a designated time and place. The designation of time and place could be made to fit in with the system of segregated calendars above described. The process of arrest should be abolished and that of summons substituted in the appropriate types of cases.

Stenographic Report of Testimony

The testimony of the witnesses should be taken stenographically in the preliminary hearings of all felony cases in the Municipal Court, and also in the trials of all those misdemeanor cases, both city and state, which involve criminal motive, using "criminal" in its stronger implications, or habitual or commercial vice. The illustrations given above in other connections indicate these types of misdemeanors. One object of this would be to increase the orderliness and thoroughness of procedure, giving each case the importance that it deserves in the mind of judge and trial prosecutor and witnesses. The accused would have a better chance of hearing what the witnesses are saying about him, a fundamental privilege of which he is often deprived under present methods. A second object would be to reduce perjury. The witness who knows his testimony is being taken down in black and white will be more careful. A third object would be to effect improvement in the preparation of state felony cases. The county prosecutor's office is now dependent upon the random notes which may have been made at some stages of the matter by the police or municipal prosecutor's office, and in most cases today receives little more than the names of witnesses. In all cases which are bound over, therefore, the transcript of the testimony should be made and transmitted through the managing clerk of the municipal prosecutor's office to the managing clerk of the county prosecutor's office. In fact, it would be well to follow the English system and that in vogue in several of our States, namely, have the witnesses

sign the transcribed testimony, which thereby becomes a deposition. In other cases, unless a perjury prosecution be deemed advisable, the stenographic notes should be kept in the files of the municipal prosecutor, the notes of each case being carefully filed with the papers of that case.

The segregation or arrangement of the court calendars follows logically from these classifications of the cases; and as the classes of cases in which the prosecutor's service is needed and for which he needs careful preparation and those which should receive considerable time for trial and those in which the evidence should be stenographically taken down, are, by and large and with easily cared-for exceptions, identical, the corresponding segregation of the calendars would result in affording the prosecution and the accused proper opportunity to prepare and present their cases, reduce to a minimum the waste of time spent idly in the court-room by attorneys on both sides, and give each case its appropriate setting.

General Aspect of the Trials

What we have just considered may seem to be somewhat mechanical and clerical details. But they are all of the utmost importance and in cumulative effect would enormously increase the effectiveness of the administration of criminal justice and the prestige of the Municipal Court, the municipal prosecutor's office, and criminal law practice. There remains to point out the possibilities open to the municipal prosecutor, if he will realize and exercise the leadership and constructive statesmanship which are his by virtue of his office. After all, the judge is dependent for his information upon the attorneys, and he needs the assistance of the attorneys to maintain the orderliness and dignity of procedure appropriate to the administration of justice. The prosecutor is not only the attorney for the plaintiff and a court officer, but also the representative of the public, with the peculiarly difficult and complex duty of presenting the public's side of the controversy while avoiding anything which savors of persecution or of deprivation of the defendants' fundamental civil rights. His position gives him the opportunity to bring about a procedure which fulfills universally recognized standards. Let him insist that every case be tried, so that the trial be really public—that is, in a physical environment which is not only quiet and dignified, but which makes it possible for court and defendant and witnesses and court officers and spectators and reporters and the public to know what is going on. Probably the judges are quite willing that their court-rooms have the aspect of habitations of justice, and if there be a judge who does not harbor such a desire, he surely would not dare to resist

the leadership of the prosecutor, supported as he undoubtedly would be by public opinion.

RECORD SYSTEMS IN MUNICIPAL COURT AND PROSECUTOR'S OFFICE

The minimum requirement for the record or docket of a case is that it disclose all steps or stages thereof, and all orders and dispositions issued or made by the court; so that the attorneys or other persons interested can at any moment ascertain the status of any case, and the chief prosecutor or public can, from the records, tabulate the statistics of the administration of justice and appraise the work of those engaged in that administration. The system of record-keeping should be such as to minimize errors and reduce to a practicable minimum the time and trouble involved in finding and tracing the history of a case. Obviously, the full record or docket of any case ought to be contained at a single place or part of the records and the system of indexing such that this place or part may be easily and swiftly located.

We have seen how far short of these minimum standards the record system of the criminal branch of the Municipal Court of Cleveland falls. Immediate overhauling and modernizing are imperative. The excellent system developed by the clerk of the Municipal Court of Chicago will serve as a model from which to work.¹

DISPOSITION OF CASES BY THE PROSECUTOR HIMSELF

Special attention should be given to the regulations governing those actions of the prosecutor, both city and county, in which the final result and disposition of the case are determined by him or on the basis of information supplied by him, as distinguished from cases in which the disposition is made by the court or jury on the basis of sworn testimony. These situations include the initial decision of the municipal prosecutor to issue no affidavit, the "no-papering" of cases, the entering of nolle, the "no bill" by a grand jury at the instance of the prosecutor, the acceptance of pleas of guilty of a lesser charge than the offense originally charged, and mitigations and suspensions of sentences.

Conciliation by the Prosecutor

The unofficial court of conciliation conducted by the municipal prosecutor, in which he sends for the accused and confers with com-

¹ EDITOR'S NOTE: A complete description of the record system in use in the Municipal Court of Chicago was attached to Mr. Bettman's report, but because of lack of space has not been included in this publication. It is on file at the office of the Cleveland Foundation, and is accessible to anyone interested.

plainants and accused and attempts to adjust their differences and then determines whether an affidavit shall or shall not issue, has been described. This all takes place in the privacy of the office of the prosecutor or assistant. There is not even the restraint which comes from the necessity of announcing the decision in open court. Absolutely no record is kept, and all that occurs and all the motives or reasons for the decision are recorded, if at all, only in the mind or private papers of the assistant.

This is too loose and dangerous a system. This kind of treatment is quite appropriate to some cases. There are controversies or acts of too petty a nature or too free from criminal motive or danger to justify arrest and prosecution, and it would be unwise to burden the overburdened court dockets with them. And, unless this conciliation work be taken over by the courts, it naturally falls within the prosecutor's field. But it offers both opportunity and temptation to permit the administration of criminal justice to be used for the collection of civil claims and for the assistant prosecutor to share in the benefits, financial or otherwise, therefrom. This opportunity and temptation should be reduced, so far as office system or practice and the chief prosecutor's executive control can reduce them. Therefore each assistant who engages in any such conciliation or decision not to prosecute should be required to make a daily written report to the chief prosecutor, on a form devised for the purpose, giving such matter as the names of the parties concerned, the nature of the charge, the terms of the conciliation or adjustment, and the reasons for non-prosecution. These reasons, moreover, should not be allowed to degenerate into formulas, such as "insufficient evidence," which disclose nothing, but should be sufficiently comprehensive to enable the chief prosecutor to pass upon their adequacy. By examining these daily reports, the chief prosecutor will be able to discover whether his office is lending itself too freely to the settlement of civil claims or dropping cases too lightly.

"No Papers"

As the practice known as "no papers" has no statutory basis or restraints, it opens another avenue for favoritism or corruption which needs to be narrowed by office regulations. Where there has been an arrest without adequate basis for further prosecution, the practice is justifiable as a means for avoiding the clerical labor of drawing and filing an affidavit. But otherwise the procedure ought be as formal, open, and safeguarded as in the case of the statutory nolle. The regulation should provide that, in every case of "no-papering," the reasons for that action

be set forth in full in writing by the assistant who makes the recommendation, and submitted for approval to the chief prosecutor or to his first assistant, if the chief delegates this authority to him, whose approval will also be written, and that then, when the case is called, the statement be read to the court.

Nolles

In state felony cases the approval of the court is required by law before a nolle may be entered by the prosecutor. The statutes contain no clear-cut provisions regulating nolles in the Municipal Court; but the authority of the court may undoubtedly be exercised to control the allowance of the motion to nolle. Where the nolle is at the prosecutor's instance, regulations similar to those described for "no-papering" should require the written statement of the assistant recommending the nolle of his reasons thereof, submitted to and approved by the chief prosecutor or delegated first assistant, the statement to be read in open court.

Where the justification for a nolle first transpires during the trial of a case, that fact and the approval of the court ought to be noted in the court entry and record and a written report thereon made by the trial prosecutor to his chief.

"No Bills"

Where the grand jury itself decides the evidence to be insufficient to warrant an indictment, the prosecutor is not necessarily responsible for that form of dropping the case. As a matter of fact, however, many "no bills" are returned by the grand jury on the strength of the prosecutor's own statement that he has no evidence to present or his own opinion of the inadequacy of the evidence presented. In these cases the "no bill" is then a procedure whereby the prosecutor dismisses prosecutions. It furnishes temptation and opportunity for hurried, careless, slipshod work. Regulations similar to those recommended for "no papers" and nolles, namely, a full written report by the assistant who recommends or brings about the "no bill," setting forth his reasons, would help to reduce this opportunity and temptation.

Acceptance of Lesser Pleas

Obviously the acceptance by the prosecutor of plea of guilt of a lesser offense than that charged should, for similar reasons, be governed by the same sort of regulation as has been described—written statement of reasons, submission to and approval by the chief prosecutor, presentation of the statement in open court.

Suspension and Mitigation of Sentences

The prosecutor is interested in the sentence, as well as the proof of the offense, and it is only proper that no sentence be suspended or mitigated without affording him an opportunity to be present and present his point of view. If he instigates or favors the suspension or mitigation, the requirement that a statement of his reasons be made, approved, and presented as in the other classes of actions covered by this chapter will reduce the opportunities for carelessness or favoritism.

The reports and statements described in this chapter should each be filed with the papers of the case, and, from and after the entry of the nolle or other disposition, be treated as public documents open to public examination.

THE PREPARATION OF CASES

A serious loss in efficiency is due to the fact that, particularly in felony cases and the more grave and vicious misdemeanors, the prosecutor's offices, municipal and State, do not get in touch with the preparation of the proof at a sufficiently early stage, with the result that valuable evidence is lost or not sought, or the search for evidence is not guided by the principles of the law of evidence or of the substantive law relating to the particular crime involved. Except in an occasional case of unusual prominence, the prosecutor, who represents the public's knowledge of the law and has the ultimate responsibility for the presentation of the public's case, does not take charge of the discovery and preservation of the evidence. The specialization of work in the prosecutor's office should include the assignment to the necessary number of assistants of this function of getting on the ground early in the search and acting as the advisers of the police and detective forces engaged in the search. As a matter of office routine and system, all information obtained by those or other assistants and the transcripts of the testimony in the preliminary hearings should be made available to the members of the office who prepare the affidavits and indictments and who present the cases to the courts and grand and trial juries, so that all information anywhere in the office is systematically placed where needed and where it can be most effectively used.

The present division of work and responsibility between the offices of the municipal and county prosecutors in every felony case is a fruitful source of inefficiency. The municipal prosecutor is under the temptation, to which he habitually succumbs, of feeling that all he has to do is to get the case through the Municipal Court and pass it up to the county authorities. Having no responsibility for the ultimate result, he feels no

responsibility for preparing the case for that ultimate result. In this attitude he is supported by the court, which generally proceeds upon the assumption that the hearing need not be thorough, since all that is required is the discovery of some indication of a violation of law, with just enough evidence to point toward the defendant as the responsible party, thus enabling the whole matter to be passed on to the grand jury. When the case does reach the county prosecutor's attention, the time for successful preparation has often gone by. Witnesses have died or have been coached or their memories affected by what they have heard and read; important documents have disappeared. The problem of centralizing the duty and responsibility of preparation is difficult, but one that must and can be met.

The simplest solution and one which should be tried as soon as the necessary legislation can be obtained is to place all State cases, both misdemeanors and felonies, in the exclusive charge of the county prosecutor from the beginning, including the presentation of the cases to the Municipal or examining court. That would involve the enlargement of the force of that office, but correspondingly relieve the municipal prosecutor's office. The present division of the work in State cases is wholly illogical and harmful.

The effective preparation and presentation of cases require the constant coöperation and coördination between the prosecutor and the police department. In Cleveland, as generally in this country, the police department is a municipal and the county prosecutor a county organ. Mr. Stanton, the present county prosecuting attorney, states that he himself has had no difficulty in obtaining all desired assistance from the police department, and in his opinion that assistance will always be forthcoming, by reason of the zeal of the members of the police force to promote the success of the cases in which they participate as arresting or detecting officers. If, however, the county prosecutor's jurisdiction is enlarged to include all stages of State cases, the necessity for this coöperation and coördination would increase and the contacts between these two departments become more continuous. Under those circumstances there may prove to be some difficulty in maintaining the necessary coördination and coöperation, and time and experiment may develop the conclusion that the only way to bring them about in a heavily populated community like Cleveland and surrounding territory is to consolidate city and county governments, at least to the extent of a consolidation of the prosecutors, police department, courts, and other departments engaged in the administration of the criminal law. But, at the very least, all State cases should be placed in the jurisdiction of the county prosecu-

tor, and in the meantime, that is, until this change is made, coöperative arrangements should be made between the two prosecutors' offices, whereby the county prosecutor can keep in touch with and influence the preparation of felony cases from the beginning. And the Chief of Police should assign a detail of detectives to the county prosecutor, so that he may have conveniently at hand some detective force operating under his instructions.

Through the development of criminology, psychology, and kindred sciences, a corresponding development of methods of criminal investigation has taken place. American police departments and prosecutors have not taken full advantage of these developments, so that the methods of criminal investigation in the United States have not kept pace with the intensification of the law enforcement problems nor with the facilities furnished and indicated by modern science. This is a subject falling more largely in the police division of this survey than here; but, in view of the important place of the county prosecutor in the administration of criminal justice and his responsibility for the final trial of every important case, it would seem advisable that there be attached to his office an expert in criminal investigation to assist in the preparation of cases. As long as the municipal prosecutor handles State cases, such an expert in criminal investigation should also be attached to his office.

The question of the continuity of the criminal courts has a bearing upon the preparation of the cases. The crowding of the calendars just before the judicial summer vacation and the summer accumulation make for overhurried and, therefore, underdone preparation. The individual judges and prosecutors can easily arrange for a continuity of work, while giving each a fair rest. Criminal justice cannot afford a vacation.

THE GRAND JURY

A case which is worthy of presentation to the grand jury at all is worthy of a careful and thorough presentation. If the steps previous to this presentation be taken with the care and thoroughness which have been recommended in previous chapters, the grand jury assistants of the county prosecutor will receive material which will enable them to do their work well and thoroughly. Then a stenographic report and transcript should be made of all testimony before the grand jury. This will have the effect of spurring the assistant prosecutor to his best efforts; will have the effect of reducing careless or perjured testimony; will have the effect of placing in the hands of the trial prosecutor information which will assist him in the adequate presentation of the case to the trial judge and jury. As things are at present, where the

prosecutor who presents the case to the grand jury receives in most cases little more than the names of witnesses, knows nothing of the case before he starts into the hearing of it and the hearing is not treated as sufficiently dignified even to take down what the witnesses say, if the case survives this stage at all, this stage becomes little better than a mechanical passing of the matter on to the next assistant.

The present situation raises, however, a deeper question as to the appropriate place of the grand jury in the administration of justice in a modern community. To what extent does the grand jury, as now used in Cleveland, perform a necessary and useful part? At present about 85 per cent. of the felony cases receive two preliminary examinations. This means that, previous to the actual trial of the case, the witnesses appear and testify at two separate times and places; that the time and energy of two successive prosecutors are enlisted in each case; that the clerical work is doubled and the executive work, such as that of the bailiffs, is doubled. This duplication, while it places an added strain upon an already overburdened machinery, does not itself demonstrate the uselessness of this double hearing. But the fact that the case is going before another preliminary tribunal has the effect, as has been stated, of making the work of the first of these two tribunals casual and careless.

The grand jury was originally an assembly of the neighborhood for the purpose of starting the prosecution of crimes with which the neighborhood was familiar by observation or reputation. It antedated the modern system of police departments and prosecutors, who now have charge of the original institution of prosecutions. In the era of royal, baronial, or executive despotism and tyranny, the grand jury came to be looked upon as an institution which would protect the people against the deprivation of their liberties by feudal barons, kings, and other oppressors. It is no longer needed as a bulwark of our liberties, as the trial courts and juries, together with other community institutions, are quite capable of protecting us against executive tyranny or persecution. Generally the grand jury does little more than rubber-stamp the opinion of the prosecutor. It is almost exclusively dependent upon him for its knowledge of the law, and for its information on the facts it is almost entirely dependent on his zeal and willingness. There will always be instances in which the inquisitorial powers of the grand jury are necessary for the initial discovery or proof of a violation of law, and in which, just as at present, the prosecution will be begun before the grand jury. At times it is needed to institute inquiry into the acts of public officials themselves, being presumably more independent of the accused officials

than other organs of the administration of justice. For these situations the grand jury, both regular and special, continues to have a special and valuable function, for which it should be maintained. But where the prosecution is begun in a court of preliminary examination, if that examination be conducted in a careful and orderly way, there is, with rare exception, nothing valuable for the grand jury to do, and the duplication of preliminary hearings produces the inefficiencies which have been noted in this report. In short, one preliminary examination is enough. If the preliminary examination demonstrates the justification for a trial, the prosecutor should then file an information¹ in the county court and the case be submitted at earliest practical moment to the trial court and jury.

This proposal is by no means revolutionary. As long ago as 1825 Jeremy Bentham, in his "Rationale of Judicial Evidence," asserted that the grand jury, as an institution, had then been useless for fully a quarter of a century. The discussion has been going on ever since. For almost a century Connecticut has been using the prosecutor's information instead of the grand jury's indictment as the normal mode of prosecution; and 18 States have constitutional or statutory provisions for abolishing the system of double preliminary examinations.

SIMPLIFICATION OF THE BAIL BOND SYSTEM

There can be no good excuse for delay or neglect in the collection of forfeited bail bonds. No type of case can possibly be more simple and easy. The pleading consists of a copy of the bond and the statement that it has been forfeited. The fact of its forfeiture is a matter of record, and there is rarely any defense or anything to prove. The best procedure would be that the forfeiture of the bond itself automatically constitute a judgment on the bond. Where, as now, suit on the bond is required, there is no reason why the suit should not be filed immediately after forfeiture and judgment and execution obtained at the earliest moment allowed by law.

The bail bond system is another place in which an unnecessary number of steps are taken, with consequent waste of effort and excessive opportunity for neglect or worse. In every felony case bound over to the grand jury three is the minimum number of successive bail bonds required; and if the case be carried to a higher court or courts, the number

¹ "Information" is the technical name given to a statement or pleading of an accusation of crime made by the prosecuting attorney as distinguished from "indictment" made by a grand jury.

will go to five or seven. If, as recommended in this report, double preliminary hearings be eliminated, this number would be automatically reduced by one. The first bond, namely, the one given at the time of arrest to secure appearance in the Municipal Court, is one which the accused desires to give quickly and for which generally he has had no opportunity to prepare in advance. The obtaining of this bond ought not be made unfairly difficult, and the accused should not perhaps be required at that time to find sureties who will stand good for his appearance at all later stages of the case. Thereafter, however, he will have ample time to prepare for subsequent happenings, and there is no good reason why the second bond, given when the Municipal Court decides the preliminary or final issue adversely to the accused, should not hold good throughout the case and secure the defendant's appearance at all later stages, including his surrender for imprisonment if he finally loses; especially as under the present statute the bond becomes a lien on the surety's property from the moment it is given. This reduction of the number of bail bonds in any case to two will materially decrease administrative and clerical detail and activity, and reduce the opportunities for neglects or corruption in the acceptance or the enforcement of the bonds.

THE PLACE WHERE CRIMINAL JUSTICE IS ADMINISTERED

The office space given to the offices of the prosecutors should be made adequate—that is, sufficiently roomy and well arranged to enable the work to be done in an orderly, efficient manner.

When religion is the dominant emotion and interest of a people, they put their energies and their talents into their cathedrals. The buildings we erect and pay for show where our hearts lie. It is symbolic of the situation that Cleveland erected a magnificent new court-house for her civil courts and a magnificent new city hall for her civil officials, leaving criminal justice to thrive as best she may in the old, black, and battered structures. A majestic and dignified environment has its effect on all who come within it. The quality of justice will reflect the quality of its home. This vital institution, where the homes and lives and liberties of her people obtain security and protection, should receive from Cleveland a home worthy of its great function.

SALARIES, TERMS, AND SELECTION OF PERSONNEL

The lawyers, the judges, even ex-prosecutors themselves, attribute to the present low scale of salaries for prosecutors and their assistants the disproportion which they believe to exist between the usual ability of

the incumbents of those offices and the importance of the work in their charge. Certainly the compensation is low compared with the professional earnings of other members of the Cleveland bar. The influence of this factor of salary upon the caliber of men who accept public positions may, however, be overstated. After all, the motive of public service, together with the allurements and fascination of public office, the power and prestige which public office brings, and the magnitude of the matters entrusted to the public official, will always remain potent influences in obtaining men to fill them. Moreover, a prosecutor's office should attract able young lawyers, to whom the opportunity for service and experience can be made highly attractive. The size of his salary will not remove from the weak man all the temptations which the position affords him for using his position in furtherance of his fortune or career. Political machines and leaders will continue to prefer men whom they can control, and the size of the salary will not necessarily lessen the number of such men on the list of candidates. It would, therefore, be a superficial analysis to expect this feature of increased salary alone to work a magical change in the caliber of men in these positions.

Salary, however, does play a considerable part in the element of prestige. Taking human nature as it is, the man who receives \$15,000 per annum has an influence and an impressiveness on and over his fellow-citizens which the same man might not quite possess were his salary one-third of that amount or less. And, of course, the amount of salary plays a part in attracting men of talent. Better salaries will impair the customary excuse of the political leader that he cannot get good men to run for office.

The salary scale in the prosecutors' offices should be materially increased from top to bottom and made consistent with the importance of these positions and with the necessity of making them inviting to men of talent. An office such as that of prosecuting attorney of Cuyahoga County, with its million or more inhabitants, should have attached to it a salary of not less than \$15,000. Corresponding graded increases should be provided for the municipal prosecutor and for the assistants in the two offices.

There is no reasonable justification for the present short two-year term of office. The prosecuting attorney has questions of policy to determine, but they are more nearly administrative than legislative policies in their nature, and there is no logical reason for a short term. Four years would be none too long.

Furthermore, the frequent change in the personnel of the assistants or the change of assistants with each change in the political complexion

of the chief is an absurd piece of inefficiency. With the exception of the first assistant, to whom the chief prosecutor delegates some of his discretionary powers and whom he can use for confidential matters, a competent assistant should be kept as long as he will stay. If the community cannot succeed in inducing the prosecutors or the political organizations to institute such a civil service system, this should then be established by law. The discharge of a competent assistant (other than the first assistant) for political motives should be treated by the Bar Association as unprofessional conduct on the part of the prosecutor, since he thereby subordinates the administration of justice to partisan politics.

CHAPTER X

THE BAR AND THE COMMUNITY

IN the last analysis a community cannot escape the responsibility for the conditions and instrumentalities, inanimate and human, in and by which justice is administered in its midst. In any institution, however, there is necessarily some group within the community which, by reason of its opportunities for observation, and for the creation of conditions and atmosphere and for influence upon those engaged in the institution, must bear the greater share of responsibility. In the administration of justice, this group is, of course, the members of the bar.

THE BAR

Law and custom prescribe that judges and prosecutors be chosen from the local bar. It is the lawyers who can give information to fellow-citizens regarding the caliber of candidates for these positions. Through disbarment proceedings and action of the Bar Association they can bring to bear special sanctions for the punishment of unprofessional practices and thereby create standards. In a word they may determine the tone of the administration of justice.

What has the bar of Cleveland, as a group, done or failed to do to improve the traditions, atmosphere, habits, and practices in the administration of criminal justice?

In 1921 the scandalous situation disclosed by the Kagy murder cases aroused the Cleveland Bar Association. William H. McGannon, chief justice of the Municipal Court, was with Kagy and Joyce shortly before the shooting and had spent part of the evening with them. Joyce was tried for the murder and acquitted. McGannon was tried twice, the first trial resulting in a disagreement of the jury and the second in acquittal. Joyce was a rather disreputable character and certainly no fit boon companion for the Chief Justice of the Municipal Court. The evidence in the three trials was full of contradictions and incredible statements, and the public felt sure that there had been some perjured testimony and subornation of perjury. The Bar Association forced the

resignation of McGannon. It brought about the presentment to the grand jury of facts which resulted in a number of indictments for perjury and subornation of perjury in the Kagy murder trials, including the indictment of McGannon. Some of these, including McGannon's case, have resulted in convictions and others are still pending at the time of the writing of this report. The association contributed the services of a leading Cleveland attorney as special prosecutor and funds for the special investigations incident to the discovery of the evidence on which these perjury proceedings were based. Great credit is due to the president, officers, and members of the association for the energy and generosity with which they responded to this call for this public service.

In 1919 the community felt suspicious concerning certain aspects of the work of the office of the then County Prosecutor, Samuel Doerfler, particularly the alleged favoritism shown defendants who were represented by two former associates of Doerfler. The Bar Association appointed a committee to investigate. This committee was not able to assert with certainty proof of corruption in any particular case, but it did reprimand Mr. Doerfler for permitting an atmosphere of favoritism to continue. The Bar Association, as distinguished from its committee, did not feel justified in acting in this instance.

According to its records and the statements of its secretaries, these two instances represent the public activities of the Bar Association relating to the administration of criminal justice in the past fifteen or twenty years. It has had active grievance committees, which investigate charges against individual lawyers. By the recent appointment of a permanent salaried executive secretary, the association has equipped itself to render more continuous and effective service. The Bar Association, as well as many individual lawyers, has given this survey active encouragement and assistance. However, the present deficiencies of the instrumentalities engaged in the administration of criminal justice represent an accumulation of many years' growth, much of which might have been foreseen and prevented. Neither the Cleveland Bar Association nor the bar of Cleveland as a group developed any machinery for continuous and habitual watch over these instrumentalities, nor have they taken the lead in either prevention or fundamental reform.

In this respect, the Cleveland association does not differ from the bar associations of other cities. Indeed, its aggressiveness in a situation even as scandalous as the McGannon affair is perhaps exceptional among bar associations in general. The outstanding characteristic of this action, however, is that it occurred after matters reached the stage of a public scandal and sensation and that it was directed at an individual case

and not at the habits, practices, standards, and atmosphere of which that individual case was but an aggravated symptom or product.

Criminal Practice and the Bar

For purposes of this survey the following questionnaire was sent to all of the 1,418 members of the Cleveland Bar:

1. Kindly state anything that occurs to you, in as great detail as possible, concerning the administration of criminal justice in Cleveland, its merits and defects. Please include your opinion as to caliber of judges and prosecuting attorneys and defendants' attorneys in criminal cases and methods of trial.

2. What, if anything, ought to be done to improve the administration of criminal justice in Cleveland?

3. Did you ever hold a position in the office of Cuyahoga prosecuting attorney, and if so, when and what position?

4. Did you ever hold a position in the office of police or Municipal Court prosecutor, and if so, when and what position?

5. While in private practice, what has been your policy and the policy of your law office regarding taking criminal cases?

6. To particularize, what class of criminal cases has it been your practice to accept or refuse, or what classes of clients in criminal cases has it been your practice to take or refuse?

7. State your reasons for said practice.

8. What is your practice with respect to obtaining release of clients and friends from jury service?

Feeling that the first questionnaire might have been overlooked by many lawyers who received it, a follow-up was sent by the chairman of the advisory committee of the survey, himself a member of the local bar. About 30 per cent. of the Cleveland bar had sufficient interest in the subject to send response. Of the 386 responses received, a considerable percentage contained no specific answers to any of the questions; the reason given was that the recipient had no occasion to go into the criminal courts and did not feel competent to answer the questions.

To questions 5, 6, and 7, those relating to their policy of accepting criminal practice, the answers may be summarized as follows:

148 answered that they accept no criminal cases whatever.

52 answered that they accept them occasionally.

82 answered that they accept no such cases from regular clients in other matters.

20 answered that they occasionally accept cases where convinced of the innocence of the defendant or are impressed by some mitigating circumstances in the case.

12 answered that they take criminal practice regularly.

The reasons given for refusing to accept criminal cases may be summarized:

The reasons of 28 were financial.

17 were ethical.

22 were æsthetic—a matter of taste.

19 were a feeling of incompetence in that class of work.

52 were a mere expression of preference for civil work.

As everybody knew before this survey was attempted, and as nearly everybody knows in every American city, except when regular clients are involved or an exceptionally large fee is in sight, most of the better grade of lawyers deliberately stay away from the criminal courts. As a result, with some notable and praiseworthy exceptions, the practice in those courts is left to the lawyers of lesser sensitiveness regarding professional practices.¹ The answers to the questionnaire formed an interesting verification of this fact. The criminal branch of the administration of justice, dealing as it does with the protection of the community against crime, the promotion of the peace, safety, and morals of the inhabitants, the lives and the liberties of men, and, therefore, from any intelligent point of view, the more important branch of the administration of the law, has become a sort of outlaw field which many a lawyer avoids as he avoids the slums of the city.

The Duty and Responsibility of the Bar

The American bar has an exceedingly difficult problem. The American lawyer attempts to combine in a single individual the somewhat contradictory talents and different, though not contradictory, professional ethics of the English barrister and solicitor. There enter into much that he does not merely the motives of the advocate, but motives which may fairly be designated as commercial. In fact, by reason of this combination of barrister and solicitor, with many other characteristics of American life, a considerable percentage of the more able members of the bar largely withdraw from the field of advocacy. They get to look upon the courts as a place from which the successful man, by reason of his success, is able to stay away. They cease to care deeply about improving the caliber of the courts and practice, and become possessed of a fear of offending judges or prosecutors or political leaders, lest their displeasure have a harmful effect upon the amount of "busi-

¹ Even those who, in the early stages of their careers, hold positions in the prosecutors' offices, tend later to withdraw from this field.

ness" which flows into their offices. This destroys their willingness or ability to combat aggressively the abuses in courts and public offices.

The judges and lawyers of the criminal courts are members of this bar and reflect its standards more than appears on the surface and more than most lawyers are willing to admit. Basically, there is no ethical distinction or very little distinction between the prosecutor's entering of a nolle in a case against a friend of a political "boss" in order that he might gain or retain the favor of that "boss," and the refusal of the counsel of a leading bank to attack that prosecutor's entering of that nolle for fear that such an attack may enable that "boss" directly or indirectly to harm the bank. The element of trusteeship may be more obvious in the one case than in the other. But the principle that the lawyer is an officer of the law, a trustee of the administration of justice, is one voiced by writers on legal ethics and speakers at bar meetings amid the approving applause of the lawyers. These sentiments become meaningless gestures or hypocrisies, if they be not lived up to in practice. It behooves the bar of Cleveland, as the bars of all other American cities, to make an effort to reduce the commercialism of the practice of law and to intensify in American law practice the motives and standards which we look upon as characteristic of the English barrister.

At the very least, the lawyers of Cleveland can make an effort to increase the prestige of criminal law practice. More than they realize, the men whom they choose to honor by offices in their professional associations are men whose distinction comes from financial successes in private practice. Let them choose as the occasional recipient of honors a man who, whether on the public or the defendant's side of the table, has devoted himself, without stain or a lowering of professional standards, to the field of practice which is concerned with the lives and liberties of men and women and the peace and order of the community. Surely there has been and will be in Cleveland men who fulfill this specification, and, if they be honored, their kind will increase in number. The office of prosecuting attorney is the highest office in Cleveland in which the duties are the practice of law; and when a man receives and accepts that office, let his brother lawyers show their appreciation of the distinction. They will thereby acquire a better right to hold him to the highest ethical and professional standards.

This is not the place into which to enter into an extended discussion of the question so attractive to the layman, whether it be ethically right to represent a defendant whom the lawyer feels to be guilty. Lawyers must surely by this time have agreed upon the principle that, as every man is entitled to a trial according to law, every man is entitled to a lawyer and

every lawyer is entitled to present the man's case regardless of the lawyer's opinion concerning his guilt or innocence. The lawyer, of course, should refuse to conduct the case in a manner not consistent with the finest ethical standards.

Criminal practice must be made a field in which the lawyer and the gentleman (in the American sense of that word) can feel at home. And one of the courses which might promote this is for the lawyers who are both lawyers and gentlemen to return to the first principles regarding the position of the lawyer as an officer of the law and accept criminal practice. If the man accused of crime knows that he can obtain first-class talent at a reasonable compensation, he will have no excuse for taking his case to the shyster or police court hanger-on, and both the courts and prosecutors will then have some justification for feeling particularly suspicious and cautious in cases in which the defendants retain unscrupulous or disreputable lawyers. In this class of work, as in the civil practice, fees will vary according to the importance of the case and financial means of the client. The mere matter of office organization, so that the classes of work do not interfere with each other, is easily solved. When we stop to think about it, it is somewhat absurd to expect the administration of criminal justice to be in the best hands while best hands avoid it. As long as the criminal law is administered by lawyers, they, whether chosen and paid by the public or by the private client, will reflect the standards and attitude of the profession to which they belong. The bar is the pool from which they all flow. The composition of the waters of the pool determines the character of the water in the stream.

If we delve somewhat deeper into the causes of the relative failure of criminal practice to attract lawyers, we will discover that neither the greater lucrativeness of civil practice nor the physical conditions and general atmosphere of the criminal courts tell the whole story. Comparatively speaking, criminal cases do not present issues or problems of law which are as novel and varied as those in civil cases; and criminal practice consequently presents less opportunity for the stimulating intellectual processes used in working out questions of law which constitute one of the allurements of law practice.

On the other hand, the questions or issues of fact are more complex and fascinating in criminal than in civil cases. The problems and mysteries of human motive play a larger part, as well as questions relating to the mental and the moral characteristics or deficiencies of the parties to the case. Lawyers, however, receive no special training or education in these fields of human behavior and mental and moral deficiencies. To

some extent a profession or branch of a profession acquires its prestige and its consequent attractiveness by reason of the special education and knowledge which its members require and possess. If some degree of education in criminal investigation, in psychology and kindred sciences of human behavior, and in psychiatry and sciences which deal with mental and moral diseases would come to be recognized as part of the requisite training of the criminal lawyer, the criminal field of law practice would gain a prestige which it does not now possess; not to speak of the greater competence which this special knowledge would bring.

This problem of increasing the prestige and attractiveness of criminal practice is difficult. We must strive and experiment for a solution. It is as important as any problem which a bar association can undertake to master.

THE COMMUNITY

The lawyers, however, are not all-powerful in the administration of justice. Judges and prosecutors are chosen by the electorate or the political organizations, and the lawyers constitute only a small fraction of these bodies. They are a portion of the Cleveland community influencing but in turn influenced by its standards. From the community the lawyers receive their temptations and their opportunities. The allurements of those temptations is furnished and the limitations of those opportunities are fixed by the community. The whole community must share praise or blame for the moral and intellectual standards of its administration of the law as of its other institutions. The community forces are, therefore, relevant factors in determining the quality of the administration of criminal justice.

Cleveland has grown with tremendous rapidity. This means that there have flowed into it, in the past twenty years, great portions of the recent immigrant streams from Europe. This naturally has intensified the problems of assimilation and adjustment incident to large immigrant populations.¹ The strength of the two main political parties does not differ greatly, with the usual result that the leaders do some confederating in the distribution of positions and favors. The leader or organization of the successful party is sufficiently powerful to select those who are to fill the available positions. But neither of the two "machines," however, has developed to that degree of efficiency and close-knit organization where it, by its own means of control, enforces an organic unity and cohesiveness in the conduct of the public offices.

Because of the rapid growth of the city financially and industrially,

¹ 239,538 are foreign-born, out of a total population of 796,836.

the opportunities for money making have been great and talk of money making is much in the air. The opportunities for a lucrative law practice are great, and young practitioners with ability and talent can easily obtain greater professional incomes than the salaries in the prosecutors' offices.

The theory of the American form of government and political organization is that the public applies its intelligence to the selection of its officials, trusting to those officials for the efficiency of their accomplishments. But, at least in the highly complex life of the rapidly growing American city, the theory does not completely succeed in practice. Experience tends to demonstrate that, in addition to and outside of our governmental and political institutions, we need non-official agencies with the function of surveying, measuring, appraising the work of the governmental and political agencies and keeping the public informed about that work in a way which the public can understand. Hence an institution such as the Cleveland Bureau of Municipal Research, whose interest is in the operation of the municipal government of Cleveland, particularly in its fiscal departments, and, by advice to and coöperation with the officials and by reports to the public, to improve methods and results.

As is the case with other American cities, Cleveland has developed no such civic agency in relation to the administration of justice. There are a number of organizations or groups which, from civic or commercial motives, watch special classes of cases, either with the object of promoting more efficient prosecution or of protecting persons from official persecution or injustice. Many of these do good work and the combined effect of their activities is valuable. For instance, the Cleveland Safety Council of the National Safety Council and the Cleveland Chamber of Commerce reports traffic violations and, through a permanent executive and a large corps of volunteers, carefully watches all traffic cases and calls attention to all failures of aggressive and intelligent prosecution. Similarly, the Advertising Club promotes the prosecution of "fake" advertisements; the Cleveland Animal Protective League looks after cruelty to animal cases; the Consumers League, violations of factory and employment laws; Dry Maintenance League, administration of the liquor laws; the Cleveland Humane Society, cases involving children and animals. The Retail Merchants Board of the Chamber of Commerce employs an attorney to render the same sort of service in cases of fraud, shoplifting, and other offenses harmful to retail merchants. The Women's Association for Justice and the Women's Protective Association aim particularly to protect ignorant persons and women involved in vice cases from injus-

tice. There are others. Each of these, however, concentrates upon the conduct of some special type of case in which it has a special interest; none of them attempts to dig into fundamentals, or to study and improve the administration of criminal justice as an organic whole. For this the city has relied on the press, and on spasmodic special grand juries and special prosecutors and special "graft" investigations in times of clamor. In this basic field of law enforcement neither the Bar Association nor any other group has as yet created an agency for constant, thorough, and expert research into justice as it is administered.

Like the courts and the prosecutors' offices, the community itself has been using the jam and drift method. Every once in a while the accumulation of miscarriages of justice, scandals, and unpunished crimes arouses the community and it institutes a special grand jury investigation or a specially aggressive newspaper campaign or a survey, and then, forgetting that the accumulation was the inevitable result of the habitual defects in the machinery, it turns to something new, whereupon the old ways go on toward the next inevitable accumulation. Unfortunately, since royalty and autocracy have gone out of fashion, there is no device yet invented whereby the public can leave public matters entirely to public officials and at the same time get the results which it desires. Continuous public check, scrutiny, reform, praise, condemnation, election, discharge, are necessary.

Cleveland should establish a special agency to perform this checking and reforming function. This bureau should have the funds necessary to enable it to perform its functions thoroughly. Of existing organizations, the Cleveland Bar Association is the one which, for many obvious reasons, might well organize and maintain or, at least, supply professional talent to this Bureau.

The formulation in detail and the carrying out of those recommendations of this survey which are deemed worthy of adoption can be made the initial program of this bureau. Thereafter it would have the function of keeping a fairly continuous check upon the work of the criminal courts and of all officials and other persons engaged in any phase of the administration of criminal justice; in other words, not a survey of the past or of the accumulated driftwood of the past, but a continuous discovery of symptoms and of diseases in their incipencies and continuous effort to prevent the diseases from gaining headway.

But, we hear the skeptic say, will not the same forces, political or otherwise, which cause a decline in standards in the administration of justice, proceed to starve or crush your bureau when it becomes an effective agency of reform? Then will you establish a second bureau to

keep tab on the first? The answer is that if the community permits, that is just what will occur. A community cannot escape from itself. Powerful political organizations are bound to exist in American cities. They have necessary and useful functions to perform. But no political organization will ever be so powerful that it can resist the genuine desires or standards of the community. If the community be willing that its officials be controlled to the detriment of the administration of justice or any other public institution, no mere piece of machinery, official or non-official, will long succeed in standing in the way. Each intelligent step taken to remove an existing defect or institute an improvement leaves a permanent residuum of progress. In the end, however, the community must impose the standard. There is no possible method of escape from its indifference to a high standard of ethics and efficiency. If Cleveland cares not merely for the results in an occasional sensational or scandalous case, but for a high standard, applied hourly, daily, weekly, year in and year out, in the administration of criminal justice, it will attain that standard.

It is in the course of actually participating in a survey of the nature of this one, and in the process of developing suggestions for remedies, that one becomes conscious as never before of the unescapable influence of the atmosphere, the traditions, the ideals, the ambitions, and the standards of the community itself.

POLICE ADMINISTRATION



By RAYMOND B. FOSDICK

PART III
OF THE CLEVELAND FOUNDATION SURVEY OF
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FOREWORD

THIS is the third of eight sections of the report of the Cleveland Foundation Survey of Criminal Justice in Cleveland.

The survey was directed and the reports edited by Roscoe Pound and Felix Frankfurter. Sections which have been published are:

The Criminal Courts, by Reginald Heber Smith and Herbert B. Ehrmann

Prosecution, by Alfred Bettman

Other sections to be published are:

Penal Treatment and Correctional Institutions, by Burdette G. Lewis

Medical Science and Criminal Justice, by Dr. Herman M. Adler.

Newspapers and Criminal Justice, by M. K. Wisheart

Legal Education in Cleveland, by Albert M. Kales

Criminal Justice in the American City, a Summary, by Roscoe Pound

The sections are being published first in separate form, each bound in paper. About November 10 the report will be available in a single volume, cloth bound. Orders for separate sections or the bound volume may be left with book-stores or with the Cleveland Foundation, 1202 Swetland Building.

TABLE OF CONTENTS

	PAGE
FOREWORD	v
LIST OF TABLES	viii
CHAPTER	
I. THE PROBLEM	1
II. PRESENT CONDITIONS	4
III. THE ORGANIZATION OF THE FORCE	8
Scope of the Police Survey	9
The Problem of Administration	10
The Machinery of Police Administration in Cleveland	10
Recommendations	14
IV. PROVISION OF PERSONNEL—ITS SELECTION AND TRAINING	22
Previous Occupation	22
Age of Appointees	24
Turnover in the Patrol Force	26
Civil Service as a Source of Recruits	31
Police Training School	32
V. PROMOTION	34
The System of Promotion	34
Limitations and Defects of the System	36
Recommendations	40
VI. DISCIPLINE	43
Record of Formal Disciplinary Actions	45
Appeals	47
Recommendations	51
VII. UNIFORM PATROL SERVICE	53
Number of Policemen Needed	55
Methods of Patrol	57
Patrol Booths	59
Precinct Stations	60
Recommendations	61
VIII. THE DETECTIVE BUREAU	62
Poor Quality of Detectives	64
Poor Work of Detective Bureau	67
Inadequate Supervision of Detective Work	68
Recommendations	69
IX. SPECIAL SERVICE DIVISION	73
Other Crime Prevention Units Needed	75
X. THE SECRETARIAL DIVISION	79

LIST OF TABLES

TABLE	PAGE
1. Number of Appointments and Resignations of Men Appointed in Years 1914, 1916, 1918, 1919, 1920	27
2. Combined Record of Appointments, Resignations, and Dismissals	27
3. Median Scores and Range of Scores of Police Divisions	65
4. Distribution of Intelligence Ratings	66
5. Summary of Distribution of Intelligence Ratings	66

POLICE ADMINISTRATION

CHAPTER I

THE PROBLEM

A CURSORY examination of the problem of crime in Cleveland produces some startling facts. For the year 1920 Cleveland, with approximately 800,000 population, had six times as many murders as London, with 8,000,000 population. For every robbery or assault with intent to rob committed during this same period in London there were 17 such crimes committed in Cleveland. Cleveland had as many murders during the first three months of the present year as London had during all of 1920. Liverpool is about one and one-half times larger than Cleveland, and yet in 1919 Cleveland reported 31 robberies for each one reported in Liverpool, and three times the number of murders and manslaughters. Practically the same ratio holds between Cleveland and Glasgow. There are more robberies and assaults to rob in Cleveland every year than in all England, Scotland, and Wales put together. In 1919 there were 2,327 automobiles stolen in Cleveland; in London there were 290; in Liverpool, 10.

Comparisons of this kind between Cleveland, on the one hand, and European cities, on the other, could be almost indefinitely extended. There is no gainsaying the fact that crime in Cleveland far exceeds, in point of volume, the crime of European cities of equal or larger size. And yet, compared with other American cities, Cleveland's record does not show to any special disadvantage. For the first quarter of 1921 there were four more murders committed in Detroit than in Cleveland, and nearly twice as many automobiles stolen in Detroit. During the first three months of 1921 St. Louis had 481 robberies, while Cleveland had 272; for the same period complaints of burglary and housebreaking in St. Louis numbered 1,106, as compared to 565 such complaints in Cleveland. For this same period the number of murders in Buffalo, a much smaller city, equaled those in Cleveland, and burglaries, housebreakings, and larcenies were almost as numerous. In 1919 Chicago, more than three times the size of Cleveland, had 293 murders and manslaughters,

compared with Cleveland's 55, so that the ratio was easily two to one in Cleveland's favor; the 1920 statistics of the two cities show an even better proportion for Cleveland.

On the other side of the scale, for the first three months of the present year Cleveland had more than twice the number of robberies and assaults to rob that Detroit had, and a similar large proportion of burglaries and housebreakings. During this period there were 296 automobiles stolen in St. Louis, as against 446 in Cleveland. Cleveland is approximately three times larger than Toledo, and yet in 1920 Cleveland had 87 murders, while Toledo had only 11.

Another basis of comparison is between the crime statistics of Cleveland in 1921 and Cleveland in former years. For the first six months of 1921, the period in which this survey was carried on, the number of murders committed in Cleveland was 15. For the same period in 1920 the number of murders was 30. Similarly, during this same period, there was a decrease of burglaries and larcenies from 573 in 1920 to 541 in 1921. On the other hand, robberies and assaults to rob increased, as between the two periods, from 454 to 534, and the number of automobiles stolen increased from 1,156 to 1,238. The following figures show the average number of complaints for the first quarter of each of the four years from 1917 to 1920 inclusive, classified according to four outstanding crimes:

Robbery and assault to rob	283
Burglary and larceny	418
Murder	17
Automobiles driven away	361

The following figures give the number of complaints of the same crimes for the first quarter of 1921:

Robbery and assault to rob	272
Burglary and larceny	265
Murder	6
Automobiles driven away	446

Obviously, there has been some improvement within the last four years.

All in all, crime conditions are no more vicious in Cleveland than they are in other American cities. In point of volume of crime in relation to size of population Cleveland is neither much better nor much worse than the other municipalities of the United States. It is when we compare Cleveland with cities like London, Glasgow, Liverpool, or almost any other European municipality that ominous contrasts are obtained. In this respect, therefore, Cleveland's problem is the problem of America,

for the same causes that are maintaining the high crime rate of Chicago, St. Louis, New York, Detroit, and San Francisco are operating here.

What are these causes? Here we can only hint at some of the deeper social and economic causes. The lack of homogeneity in our population and its increasing instability, the absence of settled habits and traditions of order, the breakdown of the administration of criminal law in the United States, and the many avenues by which offenders can escape punishment, our easy habit of passing laws which do not represent community standards or desires, our lack of cohesive industrial organization, our distrust of experts in the management of governmental enterprises—all these are undoubtedly contributing factors.

But there is another factor, still more potent: police machinery in the United States has not kept pace with modern demands. It has developed no effective technique to master the burden which modern social and industrial conditions impose. Clinging to old traditions, bound by old practices which business and industry long ago discarded, employing a personnel poorly adapted to its purposes, it grinds away on its perfunctory task without self-criticism, without imagination, and with little initiative.

From this general indictment the Cleveland police department cannot be excepted.

CHAPTER II

PRESENT CONDITIONS

THE present police department of Cleveland dates from 1866. In that year the force, consisting of a marshal and 44 watchmen, was reorganized on a semi-military basis, with a superintendent, captains, sergeants, detectives, and patrolmen. In the next forty years there followed many modifications of the scheme for administering the force; but few changes, other than increases in numbers, occurred in the internal organization. In 1907 the force totaled 614: a chief, one inspector, four captains, 27 lieutenants, 28 sergeants, 550 patrolmen, a secretary, surgeon, and detective sergeant. Of the 550 patrolmen, 20 were designated as detectives. At the beginning of 1921 the authorized force of regular police totaled 1,381,¹ including—

- 1 chief
- 1 secretary
- 1 inspector
- 4 deputy inspectors
- 1 superintendent of criminal investigation
- 1 surgeon
- 1 veterinary surgeon
- 1 superintendent of civil investigation
- 1 superintendent of tailor shop
- 17 captains
- 53 lieutenants
- 99 sergeants
- 75 detectives
- 1,125 patrolmen

Since 1866 Cleveland has grown from a small town to the fifth city in the United States. It has grown not only in size, but in the heterogeneity of its population and in the complexity of its social and business life. From a town in which many people knew each other intimately and thus

¹ Ordinance No. 52236 (Ordinances of 1920). The actual number of men employed has been below the authorized number.

furnished a substantial degree of self-protection and aid to the police, Cleveland has become, like all other communities of its size in modern times, a city of strangers.

In contrast with this complex growth of the city the police department of 1921 is little more than a physical enlargement of the department of 1866. Other branches of the municipal government have made marked progress along lines of scientific development. The school system, public utilities, fire fighting, business offices—all these have taken on a new character compared with their prototypes of a generation ago. The police department has shown no such vitality—no such capacity to make itself over on a new and improved pattern, no willingness to reshape its methods to modern demands. Instead, it has hewn to the line of tradition, ventured almost nothing in experiment, and copied very little from the experience of other private and public organizations. Today the patrol force is distributed and managed exactly as it was twenty or thirty years ago. There is nothing new in the detective service save faces and a few meager records. Traffic regulation has been developed, but this modern necessity has been met only by draining the department's resources for coping with crime. No new practices have been employed for ferreting out and removing conditions that produce crime. Practically the same methods are employed for combating crime that were used when Cleveland was just a big neighborhood in which the police knew everybody.

Let us look a little further. The department has never had and does not have today the trained and intelligent leadership which European police forces have long enjoyed. Cleveland's directors of public safety and her chiefs of police come and go, apparently with scant appreciation by the public of the fact that transient administration is fatal to success in any complex technical enterprise. Moreover, the line of authority between the director of public safety and the chief of police is so vaguely drawn that effective administration would be impossible even under the best of conditions. Lacking in leadership, the department lacks, too, in the quality of its working personnel. Machinists, motormen, truckmen, and other manual workers—these are the sources from which Cleveland takes the men upon whom she imposes tasks requiring a high degree of intelligence and technical skill, besides a keen appreciation of social values.

Similarly, we find adherence to a rigid organization applying to the entire force, regardless of the great difference in types of work attempted by the various divisions of the service. We find the department acting as the eyes and ears of other city departments in reporting on the physical

conditions of the city, promoting the safety of citizens in public places, arresting criminals, and preventing the commission of crimes, but using the same kind of man for all these tasks and clearing them through the same inelastic organization.

The department is trying heroically today to "catch up" in the apprehension of criminals and the prevention of crime. Its energies, however, are chiefly consumed in repairing damage that is not anticipated. Almost nothing is being done to find out the causes of crime, to learn the sources from which criminals are sprung, or to forestall their operations. The department takes no leading part in the study of criminals and their characteristics; it does not even avail itself of facilities for study and experiment that have been developed by schools, clinics, and other private and public organizations.

This lack of intelligence and imagination in Cleveland's police work is shown in the ragged character of the internal arrangements of the department. No private business whose affairs were carried on in such hit-or-miss fashion could escape bankruptcy. The record books of the department are poorly kept, sometimes showing erasures, changes, and additions. Nearly all reports made by patrolmen and detectives are written in pencil. There are no current consolidated reports showing summaries of operations, with comparative data for other periods which might be used for purposes of administrative control. Instead, there is a great mass of detailed matter passing over and lodging upon the chief's desk. On the other hand, not enough detailed material appears on the desks of commanding officers of the detective bureau, vice bureau, and precincts. Policemen are doing the work of clerks, and some, who might better have been employed as clerks, are doing the work of policemen. Most of the department's supervisory work is done on a memory basis, as in 1866, without even any regular order for making and receiving the verbal summaries of current business. Every one, from the chief down, appears to be engaged with the interesting things of the moment. Study and analysis of persisting or recurring problems and of results in the aggregate are hardly known.

Inadequate equipment adds to this appearance of raggedness. No private business which has to show results could work with the department's equipment. The headquarters building is wholly inadequate. Workers in every division are cramped for space, with resulting confusion and chaos. If the record bureau facilities are contrasted with those of a private enterprise having an equal volume of business, the disadvantages under which the police are working will be readily seen. There are no typewriters in the precincts save those privately owned. Supervising

inspectors do not have automobiles in which to cover the city. Members of the automobile recovery squad are frequently without a car, and must go on foot to search for stolen automobiles. The signal system is wholly inadequate for the ordinary needs of communicating with men doing field duty. No motor equipment is available for regular patrol duty.

A general picture of the police service in Cleveland gives the impression of a group of men, singularly free from scandal and vicious corruption, but working in a rut, without intelligence or constructive policy, on an unimaginative, perfunctory routine. As a matter of fact, this same indictment could be drawn against most of the police forces of America. The Cleveland department is no worse than many others; in some respects it is better. Official lethargy lies behind much that is distressing in this picture. There is another kind of lethargy, however, which cannot escape its share of the responsibility. It is the lethargy of public opinion, the community's easy habit of assuming that governmental machinery will somehow or other run itself, even in the face of meager equipment and inadequate funds.

CHAPTER III

THE ORGANIZATION OF THE FORCE

THE police service of Cleveland is organized as a division of the department of public safety. The department of which the police division forms a part is administered by a director appointed by the mayor and serving at his pleasure. The charter provides that "under the direction of the mayor the director of public safety shall be the executive head of the divisions of police and fire." The division of police is headed by a chief of police, who is appointed by the mayor, subject to civil service rules and regulations. The right to suspend the chief is lodged exclusively with the mayor. In case of such suspension, the charter provides that the mayor "shall forthwith certify the fact, together with the cause of such suspension, to the civil service commission, who within five days from the date of the receipt of such notice shall proceed to hear such charges and render judgment thereon, which judgment shall be final."¹

The rank and file of the police service are appointed by the director of public safety. The chief of police has the exclusive right to suspend any officers or employees in the police division. In case of suspension the charter provides that a trial shall be held by the director, who is empowered to render judgment, "which judgment, if sustained, may be suspension, reduction in rank, or dismissal, and such judgment in the matter shall be final, except as otherwise hereinafter provided." The charter further provides that a member of the division of police may appeal to the civil service commission from the decision of the director of public safety within ten days after the date of suspension from duty, reduction in rank, or dismissal. In such appealed cases the civil service commission has the power to "affirm, disaffirm, or modify the judgment of the director of public safety, and its judgment in the matter shall be final."

All members of the professional force enter the department as patrolmen, after examinations conducted by the civil service commission. Promotions to the higher ranks, with the exception of the rank of chief of

¹ Cleveland City Charter, Sec. 107.

police, are made as a result of competitive civil service examinations. In addition to these ranks of the professional police force there is a superintendent of criminal investigation (criminal identification), a surgeon, superintendent of civil investigation, veterinary surgeon, and superintendent of the tailor shop. Civilians are employed as matrons, chauffeurs, tailors, caretakers, janitresses, mechanics, and telephone operators.

The major part of the regular police personnel is distributed by types of work in four main divisions as follows: the uniformed patrol force, the division of traffic regulation, the detective division, and the vice squad. In addition to these main divisions are several small auxiliary units, such as the criminal identification bureau, information bureau, and record bureau, to which patrolmen and officers are assigned in the numbers required. Ranks and grades are not affected by assignment and transfer from one bureau or division to another, although some increase in salary is granted to sergeants who are detailed to the vice squad and to patrolmen assigned to serve regularly in the detective division.

For purposes of distributing the working force of the department geographically the city has been divided into 15 precincts, each having a precinct station house. The general administration of police affairs is carried on at police headquarters, which also includes the first precinct station, detective headquarters, vice squad, and all the special units.

SCOPE OF THE POLICE SURVEY

The subjects of study in this survey have been the relations between the civil service board, the public safety department, and the various police divisions and bureaus, the character of the supervision of police work in its many phases, the methods of procedure, the records and reports maintained for showing work accomplished, and the volume of crime dealt with.

In the main, appraisals of efficiency relate to methods of procedure and departmental organization viewed as an impersonal instrument of government. The relation of officials to one another and to their work in general has been looked at in the light of the office rather than of the individual. While this view of police administration has necessarily represented conditions prevailing during the period covered by the investigation, and is, therefore, an analysis of the practices and accomplishments of individuals who happened to be in office at that time, we have kept in mind throughout that it is *methods* rather than persons which form the permanent part of the organization, and it is the former, therefore, with which the larger purposes of the survey are concerned. Thus it has been the office of the chief of police, with its powers, duties, prac-

tices, and accomplishments, rather than Chief Frank W. Smith, that has been the subject of investigation. The present personnel will, in due course, be separated entirely from police administration, and any appraisal of their efficiency as individuals will then be of no value. But the practices employed and policies laid down by the present personnel must necessarily form the basis for the development of the future.

THE PROBLEM OF ADMINISTRATION

The task of the administration of police business in Cleveland consists in directing the daily activities of some 1,200 men. Keeping each of these men keyed up to his best is a problem in the management of human beings. Their work in turn consists in regulating human relations and thus promoting safety and good order in the community.

To achieve these ends in a city of the size of Cleveland a large organization with imposing equipment and record systems must be provided. It must be noted, however, that the ultimate end of this complex superstructure of organization is to be found in the acts of individual policemen, operating for the most part alone and initially unaided. The personnel of the department rarely moves in large units; the organization acts through individual members in performing the major part of the daily routine. The real police work is not done at headquarters or in stations, but on the beat.

Matters of organization, records, reports, and methods of procedure are merely convenient instruments to see that policemen are made available for duty and to provide some basis for estimating the effectiveness of these field forces. But *police* work itself, in its final analysis, is wholly personal. The sum of the generally isolated observations, investigations, and acts of individual policemen constitutes the primary police work of the department. The heart of the business of police administration, therefore, consists in training, stimulating, and directing *men* in the exercise of good judgment and initiative while on post or assignment in the field.

The work of a police department is, therefore, not readily reduced to well-defined standards of accomplishment. It involves such intangible and modifiable factors as good judgment, sympathy, patience, courage, and intelligence. Added to these there must be pride of profession, enthusiasm, and, above all, a spirit and willingness to take great pains in the prosecution of the work.

THE MACHINERY OF POLICE ADMINISTRATION IN CLEVELAND

Let us see how well the administrative machinery of the Cleveland police department fulfils its task of administering these personal relations.

Charter provisions covering the question of responsibility for the administration of police business are singularly confusing in terminology. The language is clear enough, however, to show that a deliberate attempt has been made to distribute specific powers between the director of public safety and the chief of police. Authority is apparently given to the chief by one provision of the charter, only to be taken away by another. Regarding general powers and duties in the department of public safety the charter reads: "*Under the direction of the mayor the director of public safety shall be the executive head of the divisions of police and fire. He shall also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings.*"¹ Thus, with regard to the division of buildings, which is coördinate with the divisions of fire and police in the department of public safety, the charter specifies that the director shall be the administrative authority, while his responsibility with regard to the police and fire divisions would seem to be of a different kind. The distinction here made apparently implies that in the police and fire divisions, as distinguished from the division of buildings, the chiefs of the respective divisions are the administrative heads, with the director as a sort of over-lord. The charter does not specifically state that the chief of police is to be considered the administrative authority of the division of police, but the prescriptions relating to his appointment and removal by the mayor and not by the director, and the powers and duties ascribed to him, would seem to indicate that such was the intention.

Another section of the charter reads: "*The chief of the division of police shall have exclusive control of the stationing and transfer of all patrolmen, and other officers and employees constituting the police force, under such rules and regulations as the director of public safety may prescribe. The director of public safety shall have the exclusive management and control of such other officers and employees as shall be employed in the administration of the affairs of the division.*"² Here again we are confronted by an apparent conflict. Where does the authority of the chief leave off and that of the director of public safety begin? An inquiry along historical lines reveals that the probable intention of the framers of the charter was to charge the chief with responsibility for carrying on police enterprise proper, while the director was to have full responsibility in purely business matters, such as the purchase of supplies and equipment, repair and upkeep of property. If this be true, it must be pointed out that the intention was not well fortified by later provisions in the charter, wherein

¹ City Charter, Sec. 102.

² City Charter, Sec. 103.

the chief—or administrative head of the “police force”—is shorn of all final authority in important matters governing the selection, promotion, and discipline of the police force.

Again, *“The chiefs of the divisions of police and fire shall have the exclusive right to suspend any of the officers or employees in their respective division who may be under their management and control. * * *”* This is no more than the ordinary authority attaching to the office of an administrative head of a department. In the next sentence, however, this language occurs: *“If any officer or employee be suspended, as herein provided, the chief of the division concerned shall forthwith in writing certify the fact, together with the cause for the suspension, to the director of public safety who, within five days from the receipt thereof, shall proceed to inquire into the cause of such suspension and render judgment thereon, which judgment, if the charge be sustained, may be suspension, reduction in rank, or dismissal, and such judgment in the matter shall be final, except as hereinafter provided.”*¹

Thus it appears that the chief is given wide powers,—wider than in most cities where there is a non-professional administrative head, such as the director of public safety, between the mayor and the chief,—that he is charged with the initiation of authority in administration, that is, has “exclusive” control under ordinary circumstances, while the director’s connection with the routine affairs of the police division is restricted to business matters or, as the charter vaguely calls it, “administration of the affairs of the division.” Yet, when the real test of “exclusive” control appears, it is found that the director and not the chief has all the power. The director makes all of the really important decisions, as, for example, in the matter of preparing the budget for police service, making rules and regulations, conducting disciplinary trials, and making the selections for appointment and promotions from the civil service lists. The director, however, is not required, nor does he have an opportunity, to establish immediate and constant contact with the actual administrative processes of police work.

There is another odd arrangement in connection with the distribution of powers and the establishment of a line of responsibility between the two heads of the police service. The director, while depending on the chief to exercise “exclusive” control up to the point where the director himself makes the really important decisions, does not have direct control over the chief, but merely over the facilities with which the chief has to work. The chief is appointed by the mayor and not by the director.

¹ City Charter, Sec. 106.

Likewise the mayor alone has "*the exclusive right to suspend the chief of the division of police or fire for incompetence or any other just and reasonable cause.*" As a result, the chief is answerable to the director for his management of police work, but responsible to the mayor and not the director as far as his "incompetence" is concerned. Only confused notions respecting official responsibility can result from such a situation.

In the matter of disciplinary action, it should be pointed out here that there is another step in the scale of responsibility beyond the mayor and director. The municipal civil service commission alone has the power to pass on charges preferred against the chief of police, and it renders final judgment as well in all cases involving lower ranks which may be appealed to the commission from the judgment of the director.¹

Under such a scheme of confused responsibility for police business as has been outlined above, to whom do the people at Cleveland actually look for results in policing the city? Who is held to account when a wave of robberies, burglaries, or automobile thefts occurs? Is it the director of public safety or the chief of police? Which of the two officials bears the final responsibility? The answer under the present charter is, neither. Whenever the question of efficiency is called up, the director can point to the chief and say: "There is the man who is running the department. I neither appoint him nor remove him; he is subject to civil service provisions. If he doesn't do the job satisfactorily, I am not to blame." A chief under the same conditions can reply by saying: "If I had the last word in matters of discipline, so as to weed out the unfit regardless of their political friends and influences, and keep all others on their toes; if I could make the rules and regulations governing the department and could select my men in accordance with my own standards of judgment, I could accomplish better results." The whole scheme is admirably suited to the favorite game of "passing the buck"—an especially useful game where public criticism is involved.

Moreover, the contention of each official, as suggested, would be absolutely correct so far as the charter goes. The director of public safety has wide general powers, but no specific contacts with the machinery he is controlling. The chief of police, on the other hand, is checked at a score of points where an administrator should have free initiative and complete authority. The chief's position at present is like that of a child driving a horse, while an adult sits beside him ready to grip the reins in front of his hands, whenever an important decision in the driving arises.

Naturally, under the present arrangement, the whole complexion of ad-

¹ This subject will be reviewed in some detail in a later section of this report.

ministration changes with shifts in the offices of director and chief, and since neither officer is dependent on the other for appointment or continuance in office, such changes will be concurrent only by accident. Experience in the past has shown that with an aggressive type of man serving as chief the director will become a sort of fifth wheel whose exercise of his charter authority is likely at best to be a source of obstruction. With a less aggressive chief it is probable that the director will assume more influence in the disposition of members of the force than is intended in the charter, and more than he is fitted to assume by reason of the multiplicity of his duties and his remoteness from actual police operations. Unless the chief be especially aggressive, almost to the point of standing against the director, the suggestions of the latter, because of his superior position, will be tantamount to orders. The practice of a former director of suggesting the names of men whom he desired to have detailed to the detective bureau, and the famous Order 73,¹ are cases in point. With an aggressive chief of police, as at present, there is every opportunity of confusing the clear line of responsibility in a way which reacts against the chief as a penalty instead of reward for his attempted initiative.

RECOMMENDATIONS

1. The best escape from the difficulties inherent in the present scheme involves a complete overhauling of the whole administrative machinery. In the first place, there should be a direct line of responsibility, running from a single head down through the whole organization. There should be no such short circuits as now exist between the chief and mayor around the director, who is the chief's superior. Final authority, commensurate with responsibility, should be lodged exclusively with the single directing head. This single leader should be in immediate charge of directing the operations of the force.

2. To accomplish these ends it is recommended that the police service be disassociated from the department of public safety and established as an independent department, coördinate with the other combined divisions of the department of public safety, the finance department, or the department of public utilities.

From the police point of view, there is no good reason why the police service should be organically connected with the fire and buildings division. On the contrary, there are positive reasons why it should stand alone. Although both the police and fire divisions are established to

¹ This order provided that the police were not to raid gambling houses or houses of ill fame without instructions from the director of public safety.

secure public safety, their fields of work differ widely. The fact that the personnel of the two divisions is organized on a semi-military basis is not sufficient justification for their common administration. The problems of fire extinguishment are physically definable and the work of fire prevention is highly specialized and easily reduced to mechanical standards; the uniformed force of the fire division deals with material elements. The police force deals largely with human relations; its problems are to a certain extent intangible. Firemen work in groups under the immediate direction of their superior officers; they respond to a fire in their properly assigned places and employ chemicals and other equipment as they are ordered by their officers in charge. The policeman's work is done largely on his own initiative, prompted by his own judgment.

Policies affecting fire administration relate almost entirely to the financial aspects of providing equipment and men that are necessary in the light of definitely known insurance rates and fire hazards. Policies of police administration involve social and moral needs which are far removed from such factors as the storage of inflammables, hose and water pressure, and building regulations. There is no divided opinion about the desirability of putting out fires; there is considerable room for division of opinion as to how much money the city should pay for the intangible returns of crime prevention to be achieved through an enlarged and better equipped police force, or even as to how far the police may go in curbing individual liberties in their efforts to prevent crime.

Thus, although these two forces are similarly organized, the objectives of their work are found to be wholly different and their methods of procedure widely dissimilar, while the values of their work are appraised on entirely different bases.

It may be contended that a combination of the police and fire divisions is necessary in order to assure active coöperation on the part of the police in looking for fires at night, assisting with rescue work, establishing fire lines, and enforcing the ordinances and regulations of the code of fire prevention and protection. These things the police must do, but a common administration of police and fire is not necessary to effect such coöperation. The duties of the police would remain the same if the two divisions were not connected by an overhead scheme of management. It is not reasonable to suppose that the police would neglect the performance of such specific duties merely because their directing head is not also the directing head of the fire force. One might as well expect them to neglect making arrests because the head of the police service is not also in charge of courts and prosecutions, or to fail to report broken

manholes or leaking hydrants because their division is not organically connected with the departments of public utilities and public service.

A saving in the expenses of administration may result from combining police, fire, and buildings, and the practice may be defended on the ground of economy in small cities where these divisions are not large. In Cleveland, however, the savings in the overhead cost of administration are more than overbalanced by the loss in efficiency. Moreover, it is hardly possible to find a man with qualifications of expertness in the supervision of the technical matters of fire fighting and building regulation who qualifies also in understanding the human problems incident to policing.

It may be sufficient to point out that Cleveland is one of the few large cities in the United States which still combine the administration of the police department with that of other branches of the municipal system. In most other cities the police force was long ago established as a separate entity under independent management. The same is true of all European cities. There the police function is regarded as so important that no attempt is made to confuse its administration by bringing other public activities under its leadership. The time has come for Cleveland to recognize the same principle and to give to the police department the administrative position which the importance of its work demands.

3. The department of police should be in charge of a single civilian administrative head, to be known as the director of police. The director should be appointed by the mayor with full responsibility for administering the police service, and should have the exclusive right to name his own immediate assistants, including the chief ranking officer of the uniformed force to correspond to the present chief of police. Such appointments should be terminated at the will of the director. It should be the director's duty to lay down a policy and program for police work, and to see that such policy is carried into effect by his subordinates. Under this arrangement the officer who develops the policies of police service will be subject to public reckoning, since his appointment and continuance in office depend on the mayor, who is subject to election. Undivided responsibility and authority would be reposed in a single officer at the head, and the line of responsibility and authority should continue downward direct and unbroken.

Such a director should be chosen from outside the professional ranks of the department, just as the director of public safety has always been chosen. The management of police business demands as able an administrator as can be obtained. Indeed, in a city like Cleveland, and in many cities of lesser size, the task of police administration is so great

that the best man obtainable is none too good, and in an endeavor to find him, no search can be too thorough. That such a leader can be found in the ranks of a police force is in the highest degree improbable. The officer who has walked his "beat" as a patrolman, investigated crime as a detective, and managed the technical routine of station house activity as lieutenant or captain, is not fitted by this experience to administer the complex affairs of a large police department. The chances are rather that he is unfitted for the task. Lacking in administrative experience, with scant appreciation of the larger possibilities of his position, often indeed without imagination or resourcefulness, he has little chance of success, and it would be unwise and cruel to saddle him with the responsibility. If police management were merely a matter of assignments, promotions, and discipline; if it had to do only with the ordering of a well-defined routine, any capable man who himself had been through the mill might be well adapted to handle it.

But the task, particularly in large cities, is so much broader than routine, and involves activities of such vital consequence, that only a high order of creative intelligence can cope with it. The director must deal with community problems in the large. He must be familiar with the underlying social forces which are responsible for the need of police service. Constantly before him must be the conception of the department as an agency for the prevention of crime, and the consequent relation of his work to all activities, social, economic, and educational, operating to that end. He must be able to interpret public opinion, to be a community leader, and, above all, he must be qualified to inspire a great force of policemen. In addition he must have a thorough understanding of the principles of administration.

These qualifications are not readily found in the uniformed force, nor, indeed, are they easily found in any walk of life. For that reason the search for the right man should be broadcast, and no artificial barriers of politics or residence should be interposed. If the best man cannot be found in Cleveland, other sources should be examined. A residential qualification in such cases is as irrelevant as it would be if applied to the managing director of a railroad or to the head of a medical school or an experimental laboratory. In European cities there has been no thought of applying such a test for the reason that no one would care to limit so narrowly the field of choice. With the talent of Great Britain to draw from, for example, why should Liverpool or Birmingham insist that its chief constable be recruited from its own population? Or what would be gained if Stuttgart were barred from inviting an experienced deputy commissioner from Munich to join its staff as com-

missioner, and had, instead, to employ some inferior man from its citizenship? This is the conception that governs the public service of European municipalities and to a great extent its application accounts for the difference in municipal administration here and abroad.

4. Once chosen because of his peculiar abilities, the director of police should be regarded as a permanent fixture. While the right of the mayor to remove him should remain unabridged, the exercise of that right for political causes or for reasons other than those relating to his efficiency should be checked by a public opinion strong enough to insist upon retaining a well-trying expert in an office as important as the directorship of police. A constantly shifting directorship of police can result in nothing but chaos. To gauge a well-trained administrator on the basis of his political faith is to introduce a factor as irrelevant and immaterial as his opinion on art or literature. When the right man is found for so highly developed a specialty, the city should cling to him as a business concern would cling to an indispensable employee. Only proved inefficiency or complete lack of sympathy with the police policies of the mayor should be sufficient cause for removal.

Here again we can find excellent example in the police departments not only of England and Scotland, but of France and Switzerland as well, to say nothing of several American cities where the principle of continuity in the police directorship has been followed with marked success. In Boston, Commissioner O'Meara served twelve years under four different administrations, both Democratic and Republican. The same situation today holds true in Milwaukee and in Berkeley, California, where over a long period of years the heads of the two police departments have served without interruption in spite of the kaleidoscopic changes in mayors and councils. Similarly, European cities always appoint their directors and commissioners of police as a board of directors selects a general manager or other official, not for a definitely established term, but on the basis of satisfactory work. Their task is to find men capable of serving indefinitely—men who have the ability and the willingness to devote a lifetime to the administrative problem. When such a man is found, there is no disposition to experiment with anybody else. No one would care to assume responsibility for jeopardizing an organization in which, as in all forms of business enterprise, continuity of administration is the best guarantee of effectiveness.

5. The director must have under him a chief executive officer who will serve as the superintendent or general manager of operations. Under such a scheme, what should be the relationship between the director and his chief subordinate?

The director should have the task of laying down the general program and policy of policing, and of determining the financial needs of the department. He should represent the department in all its external contacts, such as with the appropriating body, the other departments of government, as well as the schools, churches, and welfare and civic agencies. He should determine, as a matter of policy, how much of the available resources of the department should be devoted to the regulation of traffic, as against the necessity, for example, of carrying on preventive work in connection with crime. In all the welter of laws and ordinances he should decide where police emphasis is to be placed.

Once the policy in such matters is determined, it should then fall to the chief line officer in charge of actual operations to see that these policies are carried into effect. If there were a question of establishing one-way streets, for example, or of rerouting street-cars, to facilitate the movement of traffic, the director would deal with the street railway company and the commercial interests affected by the proposed changes, making the decision in cases of conflict between the needs of the general public and the private interests involved. He would, in the first instance, depend on the recommendation of subordinate experts in the traffic regulation. When the policy is decided, he would turn to the chief executive officer to see that the police carry out the new policy.

In short, the director would determine how much and what type of police service is needed, and the chief professional officer would see that such service is carried out to the best of his ability with the men and equipment given him for the purpose. The one asks for certain results and the other manages the machinery used in getting the results.

A policy may be laid down by the administrative head, but the manner in which the routine work is executed gives color to the policy. Hence the head must have a superintendent or general manager of operations who understands his policies and has sufficient sympathy with their accomplishment to go about his work with the enthusiasm of conviction. Half-hearted execution practically amounts to obstruction. It is especially important, therefore, for the head of the police department to be able to choose the man in whom he has personal confidence. On no other basis can true leadership be developed.

6. For this reason the superintendent or the chief of police—whatever his title might be—as the immediate subordinate of the director, should not be chosen as a result of competitive civil service examinations. The objection will at once be made that the present scheme, wherein the office of chief of police is surrounded by the protection of civil service regulations, makes for continuity of administration in the leadership of

the police, and that this continuity is the only protection against the ravages of politics. This assumes, in the first place, that continuity in this particular office is a guarantee of effective policing, and, in the second place, that Cleveland is hopelessly unregenerate in the matter of politics and inferior to other cities of a similar size. It is an open question how much is gained by an enforced continuity of service which is shorn of power by officers who are controlled by the fortunes of politics. Moreover, the non-political aspect of the chief's tenure in Cleveland—*i. e.*, guarantee against removal on account of politics—is a singularly weak argument in its form when it is considered that the appointments to the office have been surrounded by all of the maneuvering known to politics. In the not remote past the custom has been privately to avow candidacies for appointment to the office of chief whenever a vacancy occurred, or when it was known that a vacancy was about to occur. Thus some of the higher officers in the department have approached business men of Cleveland, newspaper editors, and friends to secure their influence and aid in getting the appointment. Accordingly, newspapers and other interests have had their candidates, though perhaps not openly avowed, in much the same way as if the office were an elective one.

The truth of the matter is that civil service protection in high administrative police positions does not guard the community, certainly in Cleveland, against politics. Politics can get around any artificial system. On the other hand, with public opinion on the alert, politics can be kept in control without any system at all. In Boston and Detroit the incumbent superintendents of police, who are the professional heads of the police force,—corresponding in that relationship to the chief of police in Cleveland,—have held office throughout successive changes in the terms of the administrative heads. Yet these officials are not subject to civil service provisions of any sort. Their appointment and dismissal rest in the discretion of their superiors. The same is true in London and other European cities. Such a continuity of service, based on freedom of choice, has real meaning, but a continuity based on the inherent difficulties of removal through a civil service trial nullifies responsibility and stultifies the work of any administrator, however enterprising.

What every police force needs is leadership—one official to whom the community can say, "Thou art the man!" and who has power corresponding to his responsibility. We shall never solve the police problem in America until we give honest and effective leadership an opportunity to show what it can do. Some time or other we have to make a beginning of trusting our public officials. Checks and balances to curb and minimize possible abuses of power have gotten us nowhere. Complex

systems to prevent bias and unfairness have brought nothing but confusion. It is time to take off a few of the yokes that have made public administration an impossible task, and put a new emphasis on positive qualities. The problem before us is not how to build up a structure that will circumvent the dishonest and incompetent official, but, after finding a competent and honest official, to surround him with conditions in which he can make himself effective.

Just as the community should, if necessary, go outside its own boundaries to get the best director possible, so the director should disregard all questions of residence in selecting his chief subordinate. Indeed, in view of the present demarcations in the police force in Cleveland, due largely to religious differences, such a step might be distinctly advisable. So long as there are in the department group-conscious Catholics and Masons, playing the part of the "ins" and the "outs," with discriminations practised by one group against the other as opportunity offers, just so long will it be difficult for a director to choose from the Cleveland force a chief who can command the unquestioned loyalty and support of his men. It will probably take the strong hand of an outsider, with no group to represent, with no old scores to settle, to put the final quietus to this factional nonsense. In any event the director, as the responsible head of his department, should be free to select his immediate subordinate on the basis of such qualifications as he himself determines.

CHAPTER IV

PROVISION OF PERSONNEL—ITS SELECTION AND TRAINING

THE charter provides that the police force shall consist of a chief of police and "*such officers, patrolmen, and other employees as may be provided by ordinance or resolution of the council.*"¹ In accordance with this provision, the city council determines what is known as the "authorized" number of police for each rank, from the rank of patrolman to inspector of police. The appointing authority is not compelled to recruit the force up to the authorized strength. He cannot, however, make appointments in excess of the number set by councilmanic action. The task of recruiting the force belongs to the civil service commission, original entrance to the department being by competitive examination. Actual appointments are made by the director of public safety from eligible lists certified by the civil service commission.

An analysis has been made of the original appointments to the department from 1914 up to and including the first two months of 1921, to determine the type of men who are drawn into police service. Particular attention has been given the appointments made in 1914 and 1921, since more nearly normal conditions prevailed in those years. The period between these two years presented unusual circumstances. Just prior to this country's entry into the war competition with industry seriously affected police recruiting, and from 1917 until after the completion of demobilization the scarcity of applicants made it difficult to keep up the authorized strength of the department. As a result, considerable modification of the standards governing entrance requirements was necessary. By 1921, however, conditions were normal in respect to the number of persons making application for police appointment.

PREVIOUS OCCUPATION

A review of the occupational sources from which policemen are recruited shows that they are drawn from a wide range of civil employ-

¹ City Charter, Sec. 103.

ments. Considering the occupations of the 56 men appointed during 1914, it is found that, of the occupations engaged in prior to entering the police department, only six had furnished more than one representative. Machinists numbered six, carpenters three, shipping clerks, ship-builders, foremen (not further specified), railroad firemen, and street-car inspectors numbered two each. The remaining 37 came from as many occupations.¹ An analysis of the previous occupations of the first 133 men appointed in 1921 shows that there were 14 occupations from which more than one recruit was drawn, accounting for 87 men altogether. Of these, 19 were machinists and machinists' helpers, 12 truck drivers, 10 chauffeurs, eight electricians and electrical workers, six carpenters, six from the plumbing trades, five clerks, etc. Forty-seven other occupations were listed, including a physical director, tree surgeon, barber, chef, sailor, musician, farmer, draftsman, chocolate maker, etc. Those who might be classified generally as manual workers numbered 111, or 83 per cent., and the miscellaneous non-manual occupations accounted for 22 appointees, or 17 per cent.

The previous experience of new policemen is, therefore, diversified, and offers almost no common factors which may be utilized in planning their training. With many of these men the choice of work is largely a hit-or-miss matter. Most of them finally settle upon policing without giving much thought to its significance or to its possibilities as a career. They think of it as a job giving steady employment and compensation equal to or better than what they were able to obtain in commercial fields.

This raw material, possessing every sort of occupational experience, must be molded into as great a degree of uniformity as possible. The recruits must first be converted into patrolmen as a sort of common denominator. When this has been done, the same men must be reconverted into detectives and special investigators, such as those attached to the vice squad. Some must give special attention to work with juveniles, and in the absence of women police, others are required to do work which should naturally fall to a division of women police.

The large proportion of men who are drawn from the various types of

¹ The 37 occupations were as follows: assembler, ball-bearing inspector, box-maker, brass finisher, bracing shifts, bricklayer, clerk, chauffeur, conductor (street-car), driver, electric crane operator, engineer, foundryman, gateman, glazier, hotel clerk, houseman, inspector (street), inspector (factory), iron-worker, laborer, meter-reader, mill worker, molder, mover, patternmaker, plate worker, presser, salesman, shoe clerk, stone assembler, trainman, tug fireman, tug dispatcher, wire weaver, woodworker.

manual work is due to economic considerations and is not ascribable to any relation between police work and the manual occupations. While the physical demands of patrolling are considerable, the work does not in any sense involve skill or adaptability in the use of the hands. Physical prowess is required as a sort of incidental qualification, but mental alertness is the primary qualification. The routine manual occupations count for little as a basis of experience in making observations and exercising judgment in taking police action. Thus, men who have been trained to know *how* to do things are brought over into a new field, utterly foreign to their experience, where they are concerned with *what* to do.

Of course, the mere fact that a man has been a manual worker, often by force of accidental circumstance, does not mean that he cannot be the sort of brain worker that a policeman must be. Manual work need not be held to disqualify him. On the other hand, it in no way qualifies him for the more important phases of a policeman's task. The significant fact in Cleveland is that by far the largest percentage of its policemen are recruited from occupations whose character is as far removed from the character of police work as can be. Consequently there are bound to be many misfits, many instances of policemen whose total lack of qualifications for their work is altogether too obvious.

AGE OF APPOINTEES

The ages at which men enter Cleveland's police service is also worthy of our consideration. According to present civil service regulations, 21 is the minimum and 35 the maximum age at which men may be eligible for appointment to the police force. Of the 56 men appointed in 1914, only one was aged below 25 and 55 were twenty-five years of age or over. Out of the 186 men appointed in 1920, there were 73, or 39 per cent., aged below twenty-five, and 113, or 61 per cent., twenty-five or over. Similarly in 1921, of the first 134 men appointed, 55, or 41 per cent., were aged below twenty-five and the remaining 59 per cent. were twenty-five or over.¹ Considering the more recent appointments, it is found that approximately one-fourth of the 1920 appointees were thirty years of age and over. Somewhat more than one-fourth of the first group of 1921 appointees were thirty or over. We believe that the maximum age for appointment to the patrol force should not exceed thirty years, and that a special effort should be made to recruit, as far as possible, men between the ages of twenty-one and twenty-five. It is said that men over twenty-five possess the advantage of maturity in their

¹ The age of one appointee was not given: these figures and percentage calculations are for 133 men.

fund of knowledge and that they are, on the whole, more reliable than "boys" between the ages of twenty-one and twenty-five. If the soundness of this position were to be fully admitted, it would be logical to conclude that the considerable number of men who have entered the department at an age below twenty-five have not been competent to do creditable police work. But this is not the fact. Indeed, it is only in a few isolated cases that criticisms of individual acts are laid to the youthfulness of policemen, and even then the criticism is made for want of a better reason.

Individual cases of failure to take proper police action are found to be due not so much to lack of maturity as to lack of *experience* in handling similar situations or faulty temperament. It is experience in the exercise of judgments required of policemen in the daily round that counts for most, and not the general maturity attaching to age. Nor is temperament a quality to be measured by age. True, the young man under twenty-five may become excited and lack self-composure in trying situations, and when such is the case, the criticism of incompetence is merited. The same may be true, however, of the man who is thirty. Higher police officials, whenever consulted on this point, agree that a man of twenty-five who has four years of actual police experience to his credit is almost invariably a better agent than the recruit of thirty or thirty-five who has had fewer years of experience.

On the other hand, there are distinct advantages to be had in recruiting the younger men to the service. In the first place, younger men are more readily trained and molded in response to the desires of the officers who direct them. Inspector Cahalane, who was, for a long time, in charge of the New York Police Training School, said: "Give me the boys in preference to the older men and I can more easily make policemen of them." In training men for the mounted service in New York, it has been found that the best results are achieved with men who have never ridden a horse. "They don't have to unlearn how to ride," said an officer in charge of the mounted squad. Men who know how to ride are accustomed to using the horse for the purpose of covering ground rapidly. Most mounted police work, however, is done with the horse in a walk or standing, and requires a different style of riding altogether. So it is with other types of police work. The fewer preconceived notions the police recruit has developed, the easier it is to train him in the peculiar requirements of police work generally. Mature men do not lend themselves to instruction and molding as readily as do the younger men, whose minds are more open and whose habits are less fixed.

It must be noted that the men who begin patrol work at an early age

have much the best chance of maintaining physical fitness until the end of twenty or twenty-five years of continuous service. Over 80 per cent. of the men of any police force continue in actual field work without promotion. Entering as patrolmen, they remain as patrolmen to the end. The man who enters the force at the age of twenty-one may be expected to measure up to the rigorous demands of his work until he has reached the age of forty-six, whereas allowances will likely be required for the man who begins at thirty or thirty-five and continues to the age of fifty-five or sixty. If for no other reason than to protect the city's investment in pension moneys allowed upon disability, there should be an effort to recruit the younger men in preference to the older ones. Field service in all hours and in all kinds of weather will much sooner bring disability to the man of fifty-five than to the man of forty-five.

The point that younger men are needed in the police department is strongly enforced by the experience of European cities. In London the minimum age for appointment to the force is twenty and the maximum twenty-seven. In Liverpool the minimum age is twenty-one and the maximum twenty-five. In Glasgow the maximum age is twenty-five, and in Manchester the maximum is twenty-eight. Paris has a maximum age of thirty, the higher limit being due to compulsory army service, which, under the old dispensation, took two years out of the young man's life.

TURNOVER IN THE PATROL FORCE

A further analysis of the histories of the men appointed during the years which we have been reviewing shows that the number of resignations during the first few years following appointment is excessive. Table 1 shows the record of voluntary separations from the service of men appointed in the given years.

The figures do not include the total number of separations. During this six-year period there were other resignations of men appointed in years prior to 1914 not included in the above calculation. These have not been included, as we are concerned only with showing the actual proportion of resignations for any one year's appointments. There are a few men dismissed from the department by order of the director of public safety who must be added to the voluntary resignations. The combined record of appointments, resignations, and dismissals for these years is given in Table 2.

This is a high turnover of personnel for a service supposed to be professional in character, one that is made attractive by reason of its guarantee against periods of unemployment and by offering retirement on pension after twenty-five years of continuous service. Notwithstanding

TABLE 1.—NUMBER OF APPOINTMENTS AND RESIGNATIONS OF MEN APPOINTED IN YEARS 1914, 1916, 1918, 1919, 1920

Resignations to the end of February, 1921												
Year appointed	Number appointed	During first year		During second year		During third year		After third year		Totals		Grand totals
		No charges	Charges pending	No charges	Charges pending	No charges	Charges pending	No charges	Charges pending	No charges	Charges pending	
1914	56	4	3	3	1	5	..	7	..	19	4	23
1916	28	4	..	4	..	3	1	3	..	14	1	15
1918	72	15	2	3	4	..	..	..	..	18	6	24
1919	206	36	4	8	5	..	..	..	..	44	9	53
1920	186	27	10	..	..	..	..	..	..	27	10	37

TABLE 2.—COMBINED RECORD OF APPOINTMENTS, RESIGNATIONS, AND DISMISSALS

Year appointed	Number appointed	Resignations to the end of February, 1921 ¹	Dismissals to the end of February, 1921 ¹	Percentages of separations by groups appointed in the given years	
				Exclusive of dismissals	Inclusive of dismissals
1914	56	23	2	41.0	44.6
1916	28	15	2	53.6	60.7
1918	72	24	1	33.3	34.7
1919	206	53	11	25.7	31.0
1920	186	37	6	19.9	23.1

¹ Figures include only persons appointed in the year designated, hence do not represent all resignations and dismissals in the department from 1914-1920.

these factors making for permanency of tenure, it is found that of the men appointed in 1914, 1916, and 1918, no less than one in three appointed in any one year had left the department by the beginning of 1921. Of the 1916 appointees, three out of every five resigned or were dismissed by 1921. Of the 1920 appointees, almost one-fourth of the number left the service for one cause or another within the first year of their appointment!

What are the causes of the large turnover of police personnel? In the first place, there may be cited the failure of a portion of the men to measure up to the demands of police work, resulting in dismissal or the initiation of disciplinary action leading to voluntary resignation. Approximately one-sixth of the 1916 group left the service for these reasons. The same was true of nearly one-fourth of the 1914 and 1918 groups, and slightly less than one-third of the 1919 and 1920 appointees. Again, rates of pay given to policemen during the years under review have not been sufficient to hold the men in the department. By 1920 it is true that the increase in salary brought police pay into line with salaries paid in many commercial employments. Whatever the rates of pay, it is safe to say that the salary schedules of the Cleveland force have never been determined on the basis of their adequacy to hold the men in contentment once they were drawn into the department. Moreover, salary schedules have been devised with the view to getting a given quota of men and not to getting men having personal qualifications particularly useful in police work.

A less tangible reason for the impermanency of tenure is that no adequate consideration of the nature of police work is given by the individual before entering upon it. As has been pointed out before, police employment is more often than not considered merely as a job to satisfy immediate needs. The resignations show that many recruits do not approach police work with any serious notion of beginning at the bottom round of a distinctive profession and developing a life career.

The police department is burdened, therefore, with a good proportion of men out of each group appointed, who are soon going to be discontented or who have no serious intention of performing creditable work as a basis for a career as policemen. The fault cannot properly be laid at the door of the men who apply for appointment. It is the business of the municipality, as the employer, to make its selections with thoroughgoing care rather than to pass out jobs to a given number of men who happen to want the job at the time and who have certain simple qualifications of physique and education. Yet there is no conscious effort on the part either of the civil service commission—which is primarily responsible—or of police officials to influence recruiting in this direction.

In this connection the practice in the London police department can well serve as a model. The utmost care is exercised by the London authorities in the selection of police recruits. Recruiting agents are constantly traveling from place to place in the country districts of England, and even in Scotland and Wales, looking for available men for the London force. They go about their business in workmanlike fashion, utilizing newspaper advertisements, and even bill-posters, and the greatest care is taken to weed out not only the unfit, from a physical and mental standpoint, but those who, in the judgment of the recruiting agents, give the impression that they are not looking upon the police service as a permanent profession.

In Cleveland, advertising for police recruits is of the most meager sort, consisting merely in a formal announcement in the papers that a competitive examination for entrance to the police department will be held on a date specified. For a while during the war some effort was made to use motion picture films to stimulate possible applicants, but this has been abandoned for the simple reason that there is now a sufficient number of applicants. The newspaper advertisement marks the end of the city's effort to attract men to the police service. Thereafter it is only a matter of measuring the men who present themselves. Whoever meets the requirements of residence, height, minimum and maximum weight and chest measurements, is entitled to continue in the examinations. These consist of a medical and physical examination as a qualifying test, and an educational examination, which is given to those who successfully pass the physical tests. The subjects of the examination, with the weights attaching to each one, are as follows: writing 1, spelling 1, arithmetic 1, practical questions 2, oral examination 1, muscular strength 1, military or naval experience in recent war and honorable discharge 1. Applicants making a final average rate of 70 per cent. or over are placed on a list of those eligible for appointment.

The examinations involve minimum standards. The tests really determine how far above the passable minimum standards the applicants stand and are not adjusted to measure the full capacity of the more capable applicants. Another evidence of the fact that the examinations are designed to accommodate minimum or qualifying standards rather than to measure maximum capacities is shown by the practice of giving the same kind of examination—not the same questions, however—regardless of whether there are 50 applicants or 1,000. Types of examination are not adjusted to changes in the supply of men nor is there any modification made in response to the need for selecting special types of men in the light of the department's requirements. Indeed, there is no

conversation between the officers of the civil service commission and of the police department on such matters.

As a result of the examinations applicants are divided roughly into two groups, the hopelessly unfit, who are promptly thrown out, and those who have made marks better than the minimum requirement. The latter are all retained on the eligible list, with certain technical limitations. The commission does not erect a scaling-wall which is heightened when applicants are many and which is made sufficiently difficult of scaling to measure the capacities of the superior competitors.

Finally, there is no effort, by either the civil service commission or the police department, to convey to prospective applicants any adequate notion of the prospects, demands, and possibilities of police service as a career. The men are taken as they come. If suitable men are not attracted, it is held to be regrettable. Standards of police work are then fashioned to fit the capacities of the men certified to the department by the civil service commission. There is never any attempt to set the standards in accordance with the actual demands of constructive and improved methods of policing, through special efforts to get the kind of men who measure up to these standards.

While the police department exercises no initiative in going after the men it wants, it does have some opportunity of looking into such personal qualifications of the applicants as are not shown in the civil service examination. Under the present arrangement the civil service commission requires the police department to make a report on a character investigation of each applicant who has successfully passed the examinations. This investigation is conducted by the commanding officers of the precincts in which the applicants have their residence, and is a more complete investigation than is conducted in most cities. This is the police department's sole opportunity, although in a limited and purely negative way, to set its own standards.

With the civil service list established, the appointing authority has an opportunity to exercise some choice in making selections, under the provision of the law which permits him to choose one out of three who are certified by the civil service commission as eligible. This privilege is generally waived, and the policy is followed of appointing in one, two, three order from the list. However, the wisdom of this discretion allowed the appointing authority has been abundantly justified in other cities, and as long as recruits to the department continue to come through the channel of the civil service commission, the provision should be maintained.

CIVIL SERVICE AS A SOURCE OF RECRUITS

As has been pointed out above, we are by no means satisfied with the way in which the civil service commission has discharged its obligations toward the police department. In spite of the fact that many of the commission's activities are prescribed by law in detailed fashion, its work has been too inelastic and stereotyped to obtain the best results. As a consequence, the department contains far too many men who are lacking in important qualifications necessary to a good policeman. It has been discouraging to examine the reports which the men are required to render in the course of their daily operations. Many of these reports show an utter lack of the ordinary intelligence demanded in making an observation the record of which becomes an official public document. A single illustrative example will suffice:

Nov. 16, 1920.

"First Precinct,
Lieut. Huge.

"Sir: * * * * *

"About 11:15 Sergt. Harwood went to the rear of the building & very shortly after that he came to the front again & that, that time a yong lady coming east was entering the building and I stoped her asking the questions as I was instructed to, this yong lady refused to give her name & the Sergt. interferred & said to this young lady to give me her name in which she did & about 11:30 or 11:40 a man coming west made an atempt to enter the hotel & this was Mr. —, we three stood there up till the time he left was about 12:05 a.m. & in the meantime about 11:50 another man came while the three of us were talking, this man I dont know his name & came there with a machine to my knowledge, & all of this time when Mr. — came, up till the time he left the sergt was still in the front of the — House, this is far as I can remember & about 12:15 or 12:20 A.M. I was ordered by Sergt Harwood to go to the rear of the building & tell the man in the rear to come to the front and that time this third man was still there.

"Respectfully,

"Patrolman."

However, we believe that as far as appointments to the force are concerned, the civil service commission can probably be more wisely employed than the police department itself. Generally speaking, civil service commissions, not only in Cleveland, but elsewhere, have done a great deal to raise the standards of eligibility in police appointments and to eliminate the unfit. Moreover, they relieve the police administrator of a vast burden of detail. The latter's whole concern is to secure raw recruits who can be turned into honest and intelligent policemen, and

any plan or machinery which will produce this material upon demand adds to the effectiveness of his administration. Arthur Woods, former police commissioner of New York, who cannot be charged with being overfriendly to civil service, defines its application to the problem of police appointments as follows: "It is undoubtedly about as good a method as any other for picking out qualified candidates, for the men come from all walks of life, and seemingly from every profession, trade, and job there is. No comparative record could be obtained, nor could the judgment of employers fairly be used to distinguish between one man and another, since there might be a thousand different employers for a thousand applicants, and as many varying standards as employers."

If, therefore, civil service could be looked upon as machinery for furnishing raw material, and if the police executive had the unchallenged right to reject, after probation, any candidates who proved unsatisfactory, there would be little in this phase of activity which could interfere with the principle of responsible leadership. Cleveland's civil service system needs a thorough overhauling and a keener appreciation of the tasks and responsibilities of the police department for which it selects recruits.

POLICE TRAINING SCHOOL

The department is to be commended for its full-time training course of eight weeks for recruits. A lieutenant of police, enthusiastic and ambitious for its successful promotion, is in immediate charge. One reason for the school's firmly established position is to be found in Chief Smith's healthy interest in its welfare. To him is due the credit for its original establishment a few years ago—a noteworthy achievement in the department's history.

Considering the resources that are available, the school for recruits is well conducted. There is need for better equipment, especially for physical training and for a larger staff of instructors. There is room, too, for considerable development or rather evolution of the school. In the first place, it should be more than a school for recruits. Indeed, it should be the department's university, providing instruction for veterans and officers, and such specialists as detectives and men of the mounted service. The idea should be to have a school in which all ranks should constantly be "freshening up"—to use Colonel Woods' expression—in police technique. The purpose of such courses should be to keep the officers from becoming "rusty," lest the recruits fresh from school be better versed in special subjects than their superiors. From time to time lectures might be given to members of various ranks by criminologists,

lawyers, identification experts, and other specialists in fields related to police work. Such special phases of police activity as discipline, preparation of records, and the giving of bail might also be discussed in occasional courses. To this plan was due the splendid efficiency of the New York force under Commissioner Woods, and its wide adoption in such cities as London and Liverpool proves its worth.

We suggest, too, that the school be developed in such a way as to become the staff agency of the department, serving as a personnel service division. The school is primarily engaged in converting into policemen the raw material furnished by civil service lists. What better agency is there for passing efficiently on the quality and adaptability of this raw material? If the personality tests, such as were recommended by the chief in his last annual report, are to be conducted, or psychological tests of one sort or another are to be held, the training school is the proper agency for conducting them.

In other words, the school should be constantly engaged in studying the problems relating to personnel. When the classes are not in session, specialists attached to the school might devote their time to working out efficiency record systems and doing other research work in connection with tests and instructions. Industrial concerns recognize the value of the investment in personnel service departments. The police department of Cleveland has a large enough force to justify an investment in the same sort of work.

CHAPTER V PROMOTION

THE SYSTEM OF PROMOTION

THE selection of recruits is but the first step in the provision of police personnel. Filling the quotas of special divisions in the department and filling the higher posts through promotion are the next steps. Regular assignment to the detective bureau is generally considered as a promotion by reason of the increased compensation allowed, but it is not technically a promotion since detectives are only detailed to the detective bureau and the men so detailed continue in the rank held at the time of their assignment.

Promotions are governed entirely by the rules and regulations of the civil service commission. These regulations provide that all promotions in the uniformed force of the police department—excluding only civilian employees—“shall be from class to class, from the lowest class to the highest,” within the force. Thus, promotion to any given rank in the department is restricted to the membership of the next lower rank, and it is, therefore, impossible to fill any post above the rank of patrolman by making appointments from outside the department.

All promotions are made as a result of competitive examinations conducted by the civil service commission. Eligible lists are furnished by the commission, and the director of public safety is obliged to make promotions from this list. Examinations given to applicants for promotion include the following subjects: “Writing, spelling, arithmetic, practical questions, as in the judgment of the commission pertain to the office to which said applicant seeks promotion; State laws and city ordinances pertaining to the duties of said office; rules and regulations of the department; seniority and record in the service of the applicant, and such other subjects or tests as the commission may prescribe.”¹

A patrolman is not eligible to promotion to the rank of sergeant until after he has served three years as a patrolman. Sergeants and lieu-

¹ Rule XVII, Sec. 5, of the Rules and Regulations of the Civil Service Commission of the city of Cleveland.

tenants must have served two years in their respective ranks before they are eligible for promotion to the next higher rank. A patrolman who has served as many as five years in the department is entitled to a marking of 100 per cent. on seniority as one of the subjects of the promotional examination. If a patrolman has served as many as three years, but less than five, his marking in seniority is reduced 10 per cent. for each year less than five. In a similar way sergeants who are examined for promotion to the rank of lieutenant are entitled to a marking of 100 per cent. on seniority after the completion of seven years' service in the department, two years of which must have been served in the rank of sergeant, and a reduction of 10 per cent. in the seniority marking is made for each year less than the seven served in the department. Applicants for promotion to captaincy must have served ten years in the department to obtain a marking of 100 per cent. on seniority, and 10 per cent. is deducted for each year less than ten years served.

The "record" of an applicant for promotion, another factor counted in promotional examinations, is determined solely upon the basis of the applicant's disciplinary record in the department. Thus, if the record shows that the applicant has not been charged with a violation of the rules and regulations of the department within a period of five years immediately preceding the date of application for promotion, he is entitled to a marking of 100 per cent. on record. The regulations further provide that if the applicant "shall have been within such five years under charges for and found guilty of any offense specified in articles 1 to 12 inclusive, of Rule XIII, of the rules of the department,¹ he shall have charged against him 20 per cent. (meaning 20 per cent. deduction from the record rating of 100 per cent.) for each of such charges; and for

¹ Articles 1 to 12 inclusive, which are deemed specific cause for suspension from the department under charges, are as follows:

Art. 1. For intoxication while on duty or while in uniform.

Art. 2. For being a user of intoxicating liquor to excess.

Art. 3. For being engaged directly or indirectly as a vendor of intoxicating liquors.

Art. 4. For wilful disobedience of any order lawfully issued to him by a superior officer in the department.

Art. 5. For incompetency to perform the duties of his office.

Art. 6. For conviction of any crime or misdemeanor against the laws of the United States or the laws of the State of Ohio or for conviction of any violation of a lawful ordinance of the city of Cleveland.

Art. 7. For making known any proposed movement of the department to any person not a member of this department.

Art. 8. For unnecessary and unwarranted violence to a prisoner.

conviction of any offense specified in articles 13 to 21 inclusive¹ of said rule XIII, he shall have charged against him ten (10) per cent. for each of such charges.”²

LIMITATIONS AND DEFECTS OF THE SYSTEM

The practice of giving some credit for seniority is to be commended, and the markings for seniority ratings are reasonably scheduled. That portion of the examination which embraces the calculation of an applicant's “record” is a disguised attempt to permit the applicant's work and experience to have some weight in an examination looking to promotion. As a matter of fact, it is nothing more than a penalty schedule—wholly negative in character. It is nothing short of absurd to imply that the present civil service examination for promotion in the police service gives any credit for meritorious work performed by members of the department who are being examined.

A mere absence of disciplinary charges indicates nothing as to the character of work done by the applicant for promotion, nor, indeed, whether much of any sort of work was done. Under the present scheme of record rating the mediocre man, if he avoid an open breach of the rules, as most of them can do without great effort, is placed on an equal footing, as far as record goes, with the energetic, able, and efficient officer who has also kept out of trouble. No attempt is made to give credit in a

Art. 9. For cowardice or lack of energy of such character as to amount either to incompetency or to gross neglect of duty.

Art. 10. For sleeping while on duty.

Art. 11. For wilfully or continually violating any of the rules or regulations of the department.

Art. 12. For habitually contracting debts which he is unable or unwilling to pay or for refusing or without reasonable excuse to discharge his lawful obligations.

¹ Articles 13 to 21 inclusive of Rule XIII are also specific causes for suspension. They are as follows:

Art. 13. For intoxication while not on active duty.

Art. 14. For indecent, profane, or harsh language while on duty or in uniform.

Art. 15. For disrespect shown to a superior officer in the department.

Art. 16. For any neglect of duty.

Art. 17. For absence without leave.

Art. 18. For gossiping about the affairs of the department.

Art. 19. For conduct unbecoming an officer, patrolman, or a gentleman.

Art. 20. For conduct subversive to the good order and discipline of the department.

Art. 21. For neglecting to report his change of residence to the officer in charge of his precinct.

² From rules and regulations of the civil service commission.

positive way for valuable work performed. Instead of allowing the mere absence of wrongdoing the highest mark that is given for police "record," a clean disciplinary record should be rated as a normal median. Failure to measure up to the least that is expected of every member of the department—compliance with the rules—should apply as a subtraction in the shape of demerits from the median rating. But demerits should be only a part of a man's record. Provision should be made for showing the converse side of the record by taking into account the opposite of neglectfulness, disobedience, and the performance of improper police action. In other words, credit for meritorious work should be given in the form of an addition to the normal median rating. It is only in this way that a premium can be placed on accomplishing more than the avoidance of wrongdoing.

Considering the promotional examination as a whole, we believed it is not well adapted for the wise selection of men possessing qualities fitting them for the tasks which promotion imposes upon them; that, as far as the mere attainment of promotion is concerned, no adequate reward, hence no adequate stimulus, is given for the accomplishment of superior police work; that opportunities for preparation and for obtaining high marks in the examination are unequal; that an examination for a rank where no knowledge is given the applicant of what specific duty he may be assigned to perform—whether patrol, traffic, detective, or crime prevention duty—is an unsound practice; and finally that responsibility for the appraisal of the personnel assets of the department and utilization of those assets through promotion are too far removed from the official who is responsible for directing the men.

The present scheme of having an independent body apply the tests which determine eligibility for promotion was devised primarily as a protection against a possible display of favoritism in making promotions. The plan has met with success in so far as it has minimized political, social, and religious influences as factors in determining promotion. This, however, is a purely negative achievement. On the positive side there is little if anything to show that there is an advantage to be gained in turning over the matter of promotions to an outside body. The written examination and the seniority and disciplinary record fall short in measuring the qualifications most needed in superior officers, for example, integrity, executive ability, and a natural disposition to assume the initiative. These qualities are all important to men filling the higher posts in a police department, yet they are not reckoned with in the promotional examinations conducted by the civil service commission. Instead, facility in arithmetic and spelling and ability to answer certain

commonplace practical questions are the measurements applied. The examination at present tests what an applicant knows. What he can do, what he has the *spirit* to do, and what he has done are significant considerations which are altogether neglected.

Judgment of fitness for promotion in work where initiative and zeal play so large a part must take into account the experience basis for determining differences between the hard workers and the lazy, between the thorough ones and the hasty or careless, between the backward-pulling, disgruntled dispositions and the enthusiastic, forward-looking men. Any method of selection which omits this test is inadequate and hence unfair to the men involved, and inimicable to the welfare of the department.

It is possible to cram for an examination, which is certain to be much like the examinations previously held for promotion to the same rank, and the applicants devote much time and thought in preparing for it. In this connection it is to be observed that the lieutenant, for example, who has an assignment in a quiet precinct or at some post which allows him considerable leisure, has the important advantage of time at his disposal during which he may prepare for an examination. In this way he may easily secure an advantage over a lieutenant who is energetically carrying on his work in a busy precinct and continuing it to such hours that he has neither energy nor time left for productive study. The latter man is building up an experience in the practical operation of the day's routine, but it stands him in no stead when he is called to compete in a promotional examination.

Under the civil service arrangement examinations for a given rank are held in advance of the actual need for making a promotion. The grades and standings on the eligible list for promotion to, and including the rank of captain of police, established as a result of the examination markings, remain in force for two years, although, after it has stood for one year, the commission has the right to abolish the list and hold another examination. Accordingly, the practical questions section of the examination must relate in a very general way to the requirements of the rank involved, for it is not known in what branch of the service the applicant will be employed. There is no opportunity, therefore, to weigh the specific needs of a given post of duty and pick a man then and there to fill it. This prevents the promotion of men within a single branch of specialized work, as in the vice bureau, detective bureau, or traffic squad. If, for example, it were determined that an additional captain of detectives was needed, the place would have to be filled either by transferring some captain from another branch of the service or by taking a man from

the list of lieutenants eligible for promotion to the rank of captain. If a lieutenant of detectives does not happen to be in one, two, or three order on the list, then there is no opportunity to promote a man with detective experience. Most of the captains recently assigned to commands in the detective bureau have been taken directly from commands of the uniformed patrol service. Some had never had any detective experience. The same would be true in making a promotion in any other branch of specialized work.

Perhaps the most serious objection to the present methods of making promotions is that the choosing of men to fill the higher posts is so far removed from the directing head of police operations. An independent body determines who the subordinate leaders of police business shall be after tests which, as has been shown, do not consider the more important personal attributes with which only the police administrators alone can be acquainted. Actual choice, with a range of one out of three eligibles, is left to the director of public safety. The chief of police, acting as the administrative head of the department, has nothing to say about it except in cases where there is such happy accord between the director and chief that the director may ask the chief for his recommendations of choice. The net result is that there is no one exercising the practical police point of view in looking out for evidences of ability in individuals who indicate fitness for promotion to particular posts of duty. Where the administrative head has no concern about naming the men who shall be promoted, he will spend no time in making appraisals. He will simply take the men who are given him by the civil service commission and do the best he can.

This situation relieves the head of the department of what should be one of the most important of his tasks, if not the most important, namely, the intimate supervision of the work of his subordinates with a view to developing the maximum use of whatever special abilities may be discovered in them.

Stephen O'Meara, who for many years served creditably as police commissioner of Boston, defined the situation as follows: "No written examination can possibly disclose the qualities and habits which are of vital importance in a police officer of rank and can be known only to his superiors. Among them are judgment, coolness, moral as well as physical courage, executive ability, capacity for the command of men, sobriety, and other moral qualities, standing among his associates and in the community, powers of initiative, temper, integrity, energy, courtesy."¹

¹ From a private memorandum.

Theodore Roosevelt, in his *Autobiography*, expressed himself in similar vein. "I absolutely split off from the bulk of my professional civil service reform friends when they advocated written competitive examinations for promotion. In the police department I found these examinations a serious handicap in the way of getting the best men promoted, and never in any office did I find that the written competitive promotion examination did any good. The reason for a written competitive entrance examination is that it is impossible for the head of the office, or the candidate's prospective immediate superior, himself to know the average candidate or to test his ability. But when once in office, the best way to test any man's ability is by long experience in seeing him actually at work. His promotion should depend upon the judgment formed of him by his superiors."¹

RECOMMENDATIONS

It is recommended, therefore, that the matter of promotions be put squarely up to the director of police. He should be enabled to make use of the civil service commission as a staff or agency equipped to make certain limited measurements. But he should be allowed to place his own valuations on the tests made by the commission and make any other tests he may see fit in order to arrive at his decisions regarding promotions. Under such an arrangement the civil service commission might be asked to conduct examinations which would really amount to qualifying examinations based on certain minimum qualification standards. The police head could then add to these results the estimates of a candidate's worth, based on lines not covered by the civil service examination.

It is further recommended that there be established a board, to be known as a board of promotion, consisting of three to five members of the higher ranks in the department. It should be the duty of this board to make recommendations for promotion to the director of police after thorough investigation and examination or series of examinations as may seem necessary. The members of this board should be designated by the administrative head of the department to serve in such capacity at his pleasure. We do not wish to recommend in too specific detail what the composition of this board should be. If the principle be established, there may be many modifications in a scheme designed to carry it out. It is suggested, however, that in addition to the chief line officer of the uniformed force the head of the police training school, as the depart-

¹*Autobiography*, p. 161.

ment's specialist in matters of personnel, be included in the membership of the board. Of course, it would be necessary to have the board composed only of members having a rank always equal to and generally higher than the rank to which promotion is to be considered. In the case of promotions in the detective service, the chief of detectives and possibly another detective officer should be included in the board's membership. For promotions to posts in the patrol service, officers of the uniformed force should be substituted for the detective officers. Similar substitutions should be made in designating the board's membership when considering promotion to other special branches of the service.

Preliminary to the examination made by the board of promotion, commanding officers of the various units in the department should be required to submit names of such members of their commands as are deemed worthy of consideration for promotion. These recommendations, together with such efficiency records of the candidates as may be available, should be reviewed by the board of promotions. Provision should be made for allowing any member of an eligible rank who may not be endorsed by his commanding officer to make application to the board to have his name considered for promotion. The board could establish weights for seniority and prepare a schedule of merits and demerits to apply in making its recommendations. There are no measurements now used by the civil service which could not be used by a board of promotion, but the board of promotion can employ measurements that are not and cannot be employed by an outside civil service commission.

Recommendations for promotion should be delivered by the board to the administrative head of the department, who should have unrestricted authority to accept or reject the board's recommendations.

We submit that the establishment of a board of promotion, composed of members of the professional force, whose duty it is to pass judgment on the quality of men as policemen and the quality of their work, will accomplish four highly desirable results: First, such a scheme would introduce expert appraisal of fitness for work with which the appraisers are themselves thoroughly familiar. Secondly, it would tend to stimulate a feeling of self-reliance in the police personnel and imbue the higher officers with a heightened sense of responsibility for promoting the best interest of their profession. Thirdly, it would be the first step in the direction of setting up machinery which would almost certainly evolve standards and means of measuring the efficiency of policemen. When all members of the force realize that what they do, as observed by their superiors who are competent to judge, alone counts for advancement, there will be a new tone in the whole department. Fourthly, a board of

promotion would eliminate favoritism in making choices for promotion perhaps more thoroughly than does the civil service commission. Policemen will be the first to welcome an escape from outside interference. They do not need barriers to keep them from rushing to influences which they know have always worked for demoralization and the disrepute of their activity. They have in the past affected alignments with outside political interests only because those interests had connections with elected officers who determined appointments, promotions, and assignments to favored posts. But once the whole job of policing is left to the personnel responsible for it,—including, of course, a civilian administrative head,—without the introduction of outside connections that make for interference, the professional force will show that it has a natural pride in its work, that it desires a good name and an efficient department, more, indeed, than other persons whose standing and interests do not rise and fall with the standing of the police department.

Lest it be thought that this recommendation for a board of promotion is of too radical a character, attention is called to the fact that this same system is now and has been for many years in operation in Boston and other American cities, where it has worked with unqualified success. Similarly in London the non-competitive system of promotions is the method in vogue. There the civil service commission enters the situation only upon the invitation of the police commissioner, to assist the department in weeding out men whose lack of education makes them unfit for promotion, and the examination which it gives is merely to test the general educational capacity of the applicant. A second examination in the elements of police duty, both oral and written, is given by a board of police officials, and those who emerge from these two tests are eligible to promotion, although the commissioner, of course, makes his own choices from the list.

Some such system as this is necessary if our police departments are to be saved from lifelessness and dry rot. With promotions the result of real excellence in police work under the watchful eye of superiors, much of the present inertia would disappear.

CHAPTER VI

DISCIPLINE

THE term discipline as here used includes both its narrower and broader meanings. Discipline in its narrow sense relates only to punishment administered for some violation of the rules and regulations or dereliction of duty. This punishment may take the form of a cancellation of vacation days, suspension without pay, demotion, or dismissal from the department. In its wider meaning the word discipline embraces the conduct and bearing of members of the force in the performance of their duty and the manner in which the force responds to the leadership of the various officers in charge of operations.

In its wider meaning, therefore, the discipline of a police force is of far-reaching significance. The essential basis of all good police work is the character and physical power of the individual men. As Arthur Woods says: "They must be strong of body, stout of soul—sturdy, two-fisted specimens, knowing how to hold themselves in restraint even under severe provocation, yet prompt and powerful to act with force and uncompromising vigor when only that will maintain order and protect the law-abiding." In other words, alertness, keenness, self-restraint, and vigor are the essential earmarks of a good police force.

It would be impossible to claim that these characteristics are particularly noticeable in Cleveland. We have observed a sufficient number of instances of laxity in police work to warrant the general conclusion that something is radically wrong with the standard of discipline. No effort was made to spy on the men for the purpose of detecting flaws in their conduct, but many casual observations were made of the men as they went about their work on the streets, in station houses, and at police headquarters. It was not at all uncommon to find two policemen talking together while on post duty, and carrying on long conversations with citizens while on post seems to be a habit. Some conversation with citizens is, of course, necessary, but reference is here made only to those conversations the manner of which clearly showed that the discussion was not confined to lines of police duty. These conversations occurred on posts covering the busiest streets as well as in the more quiet districts.

On one occasion the traffic cornerman at the intersection of Superior

Avenue, N. E. and the Public Square was off duty from 11 A. M. until some time after 11.15 A. M. A gale was blowing at the time, so that there was some danger to pedestrians in crossing the street, as automobiles and street cars were moving without any regulation. During all of this time the patrolman who was on post at the southwest corner of the post-office building was engaged in conversation with a citizen, with his back turned to what really amounted to an emergency situation on the uncovered traffic post a few feet away. Many patrolmen while on post duty were observed leaning against posts or buildings as if too tired to stand erect. The frequency with which needlessly prolonged conversation and other forms of idling occur reflects discredit on the work of patrol sergeants. Either the sergeants are not aware of what constitutes alert patrol, or they are too lenient in their supervision.

On the afternoon of February 21 a building in process of demolition at East Sixth Street and Superior Avenue, N. E., collapsed, killing and injuring several men. A large crowd gathering to view the rescue work necessitated a considerable detail of policemen to keep the crowd back, so as to allow firemen to work and to protect the people against the danger of the unsafe building walls. Crowds were allowed to gather on the sidewalks across Superior Avenue from the building, and no adequate measures were taken to keep open passageways on the crossing sidewalks. A patrolman was stationed at the southwest corner of Sixth and Superior. He was watching the firemen at work about the wrecked building with the same sort of preoccupation as that manifested by the crowd blocking the sidewalk. He was not doing as well as the crowd, in fact, for he was chewing tobacco and violating the law by expectorating continually in the street. A sergeant forced his way through the crowd and instructed this patrolman to clear a passageway. The patrolman made a grimace, as if in disapproval of having his attention called to the fact that he was supposed to be policing the crowd. He started a few citizens moving, but never properly cleared the passageway.

At the same place, on the day following, two other policemen, one a foot patrolman and the other a horse-mounted man, were observed while they were policing a crowd which had gathered to witness a parade of the Cleveland Grays. Both men were facing the parade, and as the flag-bearers' detachment passed the policemen failed to salute the national emblem, in careless disregard of the instructions covering honors to be rendered by members of the force when in uniform and on duty.

One more example of slovenly attitude may be cited. A squad of nine men was observed at the 2.15 P. M. roll call assembly in a precinct station. While the officer who was holding the roll call read the orders

to this outgoing platoon, three of the men who were chewing tobacco stepped out of their line formation in order to expectorate. Another was seen whispering to the man standing in line beside him as the description of persons wanted and alarms giving information of all kinds was being read by the officer in charge. An attitude of this sort makes a joke of discipline. It makes the uniform a cheap pretense.

These instances have not been given in any captious spirit. It is submitted, however, that although these minor derelictions may be small in themselves, the very frequency of careless, slovenly, and inattentive actions indicates a general absence of good discipline. The whole force needs toning up. It needs to be infused with vigor and alertness. The men should be gotten onto their toes. The department's morale should be stiffened with the same spirit that Arthur Woods put into the New York force during his administration. This means discipline; it means the strict observance of the letter of the department's regulations; it means the exaction of a full measure of compliance with police duty. It brings with it no hardships. On the contrary, it promotes an esprit de corps that makes for the happiness and self-respect of the entire force.

RECORD OF FORMAL DISCIPLINARY ACTIONS

An analysis was made of major cases of disciplinary action which had resulted in suspension from duty on the order of the chief of police and subsequent trial by the director of public safety. There were 64 members of the force tried during the year 1920. One member was tried twice during the year and two other members were charged with a second offense within the year and dismissed from the department, having signed after the first trial a resignation to be accepted by the director at his pleasure. Thus, there were 67 offenses subject to the trial judgment of the director committed by 64 persons during 1920. In a number of cases more than one charge was preferred against a single offender. The nature of the charges preferred in the 67 trials is shown in the following tabulation:

Intoxication and drinking in uniform	23
Intoxicated while on duty	12
Intoxicated while off duty	8
Drinking in uniform while on duty	3
Neglect of duty (allowing prisoner to escape, not using due diligence, etc., etc.)	9
Off patrol (sleeping, sitting in stores, etc.)	11
Reporting late; failure to ring duty calls, etc.	11
Disobedience	9
Use of indecent language	5
Feigning sickness	3

Shooting craps or running crap game	3
Interfering with an officer on duty	2
Miscellaneous	9
Beating horse; offering to permit the making of whisky in return for payment of money; refusing to pay street-car fare while not in uniform; abusing pool-room keeper, etc.	

An examination of the previous record of the 64 men tried in 1920 shows that 25 of them had not been previously charged with offenses. The remaining 39 had been charged at one time or another with 99 offenses, as shown by the following tabulation:

Drinking and intoxicated	24
Off post	12
Neglect of duty	11
Late to roll call	10
Failure to ring duty calls	6
Indecent and abusive language	6
Disobedience	5
Failure to report to prosecute	4
Feigning sickness	3
Improper performance of duty	2
Miscellaneous	16

The results of the 67 trials held in 1920 were as follows: two members were reinstated without punishment, being found not guilty; in 38 trials some form of punishment was administered and the members retained in the department. Of the remaining 27 trials, 21 resulted in dismissal from the service of the persons tried, and six members resigned before the date for trial, while charges were pending against them. The nature of the punishment imposed in cases other than cases of dismissal is shown below:

Reprimanded, suspended four days, fined ten days' vacation and required to sign a resignation to take effect when accepted by the director	1
Reprimanded, suspended four to thirteen days, fined two to six days' vacation	2
Reprimanded, suspended four to six days' vacation	2
Suspended four to thirty-five days, fined four days' vacation to all vacation for a period of five months, and required to sign a resignation to take effect when accepted by the director	10
Suspended three to thirty days, fined one day's vacation to all vacation for nine weeks	17
Suspended five to forty-five days and demoted	2
Suspended nine to fourteen days	2
Fined three days' vacation to vacation for a period of one month, and required to sign a resignation	2

Considering the cases involving a charge of intoxication and drinking in uniform, it is found that out of 23 cases, only four resulted in dis-

missal from the department. One resigned while charges were pending; eight received a sentence of suspension from duty for a definite period, fine of days off or vacation, and in addition were required to sign a resignation to be made effective at the pleasure of the director. The remaining 11 were suspended and fined days off or vacation. Since some punishment was levied in all cases, it would appear that proof of the charges was furnished to the director in each case.

The record for the first five months of 1921 is much like that of 1920. Intoxication cases from January through May, 1921, numbered 11. The records show that in a majority of the cases the member accused was intoxicated or drinking while on active duty. These 11 trials resulted in the dismissal of four members. In the case of one member whose previous record showed charges of intoxication on several occasions, the penalty was suspension for five days, fine of two days' pay, and loss of the next four days off duty. In another case charging intoxication and being off post the punishment was suspension for ten days and fine of five days' pay. Intoxication is a very serious offense in police business. A policeman who has possession neither of his wits nor of his self-control is worse than useless. Indeed, it is nothing less than shocking for a policeman, with all the wide powers which his office implies, to be under the influence of liquor. A man who cannot resist the temptation to become intoxicated while on duty is not fit to wear the uniform, however insignificant the offense may appear, or however worthy the man may be for other employment.

The London police force long ago adopted the principle of making intoxication while on duty the occasion for immediate dismissal. No excuse is accepted. The same rule could wisely be adopted in Cleveland. Certainly the penalties imposed in Cleveland for intoxication by the civil service commission during 1920 were not sufficient to reduce the rate of offenses in 1921, nor will the punishments imposed in 1921 convey to the members of the force any adequate appreciation of the seriousness of their offense.

APPEALS

The decision of the director of public safety is not final in the event that the member tried desires to appeal his case to the civil service commission. No case resulting in a punishment less than dismissal or demotion was appealed to the commission during 1920. However, in something more than half of the cases resulting in dismissal or demotion such an appeal was taken, and with much success. The civil service commission affirmed the judgment of the director in seven cases, but

disaffirmed his ruling in six cases. Four patrolmen who had been dismissed from the service were reinstated, and two sergeants who had been demoted to the rank of patrolman were restored to the rank of sergeant by order of the civil service commission.

A brief résumé of the facts pertaining to the cases in which the commission disaffirmed the ruling of the director follows:

1. Patrolman — was dismissed after trial on the charge of refusing to arrest a woman who, he knew, had stolen a ring and of accepting custody of the ring. This patrolman's previous disciplinary record disclosed that he had been reported some 15 times—late, several times; off post, several times; having debts of long standing, slapping a newsboy, and failing in appearance to prosecute. He was reinstated by the civil service commission with a forfeiture of six weeks' salary. In other words, the civil service commission substituted its own judgment for the judgment of the director of public safety.

2. Patrolman — was dismissed after trial on a charge of having visited a known prostitute in a city hospital and interceding with an attending doctor on her behalf while in an intoxicated condition. Previous record shows charges of intoxication and ungentlemanly conduct. The civil service commission reinstated him in the service without penalty.

3. Patrolman — was dismissed on a charge of refusing to pay his street-car fare when not in full uniform. Doubtless this charge was viewed in the light of this patrolman's previous record, which follows: charged with undue use of blackjack; feigning sickness; twice failed to report to prosecute; received money for the performance of regular police duty; reporting late; making false report; using abusive language. He was reinstated by the civil service commission.

4. Patrolman — was dismissed after trial on a charge of failure to patrol and ring duty calls. His previous record shows: absence from post; late at roll call; feigning sickness; failed to charge another with violation of law; intoxicated; off patrol; failure to ring duty calls; drunk and picking fight; drinking; off patrol. The civil service commission reinstated him.

5. Sergeant — was suspended for six weeks and demoted to rank of patrolman as a result of charges of disobedience, leaving a post before he should, and failure to prefer charges against a patrolman. Restored by the civil service commission to rank of sergeant.

6. Sergeant — was suspended and demoted to rank of patrolman following charges of neglect of duty and unnecessary conversation with citizens. Restored by the civil service commission to rank of sergeant.

Incidentally, one of the cases above cited affords striking illustration of the present chaotic conditions in the police department due to divided leadership. The chief of police evidently felt that a violation by a superior officer of the department's rule in regard to the holding of unnecessary conversation with a citizen gave evidence of such officer's unfitness to do supervisory work. Accordingly, the chief, in preferring charges, recommended demotion. There was no disputing the technical guilt of the officer, and the director ordered demotion in compliance with the chief's recommendation. However, in delivering formal notice of judgment the director completely vitiated his attempt to uphold the chief when he stated in the letter which was made public that he did not approve of the judgment which he himself had rendered. The following is an extract from the letter: "While there may be some doubt as to whether the mere conversing with citizens for this period of time, when supervising detail policemen, constitutes neglect of duty within the meaning of the rules and regulations of the police department and the city charter, I am satisfied that you were indiscreet in your conduct on this occasion, and I therefore have resolved all doubts against you in the interest of strict discipline in the police department. My finding is that you are guilty of violation of Article 16 of Rule 13, as charged. Such finding is made for disciplinary reasons upon the recommendation of the chief of police, although I believe the punishment is severe for the offense committed."

It is small wonder that the disciplined member in the case just cited appealed to the civil service commission and that the commission reversed the judgment of the director when he himself believed it too severe. We have here, therefore, one head of the department determining that satisfactory standards are not being met and demanding a penalty; another head interpreting the issue without having standards of his own; and a third body in no way responsible for administration overruling both.

The record of cases appealed to the civil service commission in 1921 is even worse than that for 1920. At the time the survey tabulation was made, four cases had been appealed to the commission. Three of these cases involved dismissal from the service and one demotion in rank. Two of the dismissed members were reinstated, and the officer demoted was restored to rank by order of the commission. In only one case out of four was the judgment of the director sustained.

Obviously, the civil service commission must make its decisions without any thought of the defendant's value as a reliable policeman. It must confine its considerations, as would a court of law, to the single

charge at hand. From the police point of view the specific charge covering an offense may confirm a well-grounded distrust or lack of confidence in a certain policeman; the last charge may be the final proof of unfitness. The civil service commission, however, does not assume the point of view of the police official. Moreover, it brings no responsibility for achieving police results into its deliberations and measures offenses by standards which are bound to be more lenient than can reasonably be employed in police discipline. It views offenses as mistakes and transgressions that would not be so grave, perhaps, in other lines of work. It often appears to overlook the significance of such offenses in a policeman and the demand of good conduct and right morals which the policeman's peculiar tasks present.

So long as the civil service commission in Cleveland is permitted to impose its own standards of personal fitness for police work, good discipline in the department cannot be attained. Neither the chief of police nor the director can do away with the weak links in the department's chain under the present arrangement, whereby final authority in matters of discipline is given to an outside body having no connection with police work and no intimate appreciation of its problems.

It must be pointed out, moreover, that the difficulty of civil service usurpation extends far beyond the particular cases handled by the commission. Efforts on the part of the head of the police department to improve police discipline and standards of conduct are hindered in all of the border-line cases for the simple reason that fear of failure in being supported by the civil service commission makes for hesitation in initiating disciplinary action and for tolerance of much that it is desired to correct and improve. With the recent year's record of reinstatement of policemen whom the chief and director have adjudged to be unqualified for the performance of satisfactory police work, is it any wonder that the chief is hesitant in taking adequate measures to correct minor evidences of poor discipline? And what is the effect of a ruling by the civil service commission that while a policeman may be guilty of refusing to swear out a warrant as ordered by his superior officer, demotion in rank is too severe a penalty to be imposed? The obvious effect is that those members who are least valuable to the department can snap their fingers in the faces of their superiors and pay only so much allegiance and obedience to them as would be required by the civil service commission.

RECOMMENDATIONS

The remedy for strengthening the morale and improving the discipline of the department lies in transferring final authority in matters of discipline from an uninformed, irresponsible, politically appointed civil service commission to a single responsible, expert administrative head of the police force. As far as its disciplinary functions are concerned, the civil service scheme has been fully tried in Cleveland, and we submit that it has been found wanting. It is recommended, therefore, that full powers of disciplinary action be vested in the director of the department of police, and that a trial board, composed of officers of the professional force, be designated by the director to try delinquent members and submit findings, with recommendations to him. The director should have the power to accept, reject, or modify the recommendations of the trial board.

We recognize that objection will be made in some quarters that if so much power is given to a single police head in matters of promotion and discipline, he will abuse it by interjecting elements of political favoritism, and that giving members of the police force a share in determining these matters is dangerous. This danger is admitted, but we shall never solve the police problem in America until we give honest and effective leadership an opportunity to show what it can do. There is no chance for progressive improvement in a police department if the hands of the responsible executive are tied in his dealings with his men. Here again we must turn to Boston for an example of a rational system. As we have seen, complaints against members of the force are heard by a special trial board of three captains appointed by the police commissioner. The commissioner, however, is always supreme. He can at any time change the personnel of the trial board, order a new trial, or set aside the recommendations of the board in regard to the punishment to be imposed. His word is final, and from it there is no appeal to a higher civil authority. On no other basis can responsibility be centered and a police force be rid of useless or dishonest employees. To divide responsibility with a civil service commission, a mayor, a court, or any other authority, is to sow the seed of demoralization and to make real success impossible for any administrator, no matter how able.

Briefly, we do not believe that large strides in the improvement of the police service can be accomplished in Cleveland under the general assumption that:

1. Cleveland can only have public servants who are politically minded and whose natural dishonesty must be checked and guarded against at all times.

2. That members of the police force who do the work can never know their job as well as persons on the outside, for example, newspapermen and politicians, and that policemen have little or no natural respect for themselves or pride in the success of their work.

3. That the public service is only worthy of mediocre men, and no attempt need to be made to get superior men.

4. That power and authority necessary to do a given job well cannot be entrusted to a public servant.

CHAPTER VII

UNIFORM PATROL SERVICE

POLICE operations will be discussed under four headings, representing four functions of a police department's work, viz., uniform patrol service, detective bureau operations, special activities, including crime prevention work, and the secretarial division.

Patrol by members of the Cleveland uniform force is a matter largely influenced by tradition. Little change in the method of distributing the patrol force or in supervising its operations has occurred within many years. Some improvements have recently been made in the reporting of work performed by the patrol force, although slight use is made of this information; for the most part it becomes merely a matter of record and is not employed for purposes of administrative control. While there have been substantially no changes in police patrol practices, or in the geographic distribution of the force by precincts, there have occurred many marked changes in conditions prevailing in Cleveland.

It is not unusual for a migration of population to occur which completely alters the police problem of a district. The influx of negroes, which has occurred in the Eighth Precinct, presents a new police problem, and so does the mixture of races in the Third, Fifth, and Sixth Precincts, lying southeast of the business center of the city. The character of these areas has so changed in a short time as to alter completely the demands made upon the police department. Again, there have been instances of rapid change from good residential districts, with a permanent population, to boarding-house and furnished-room districts, accommodating a transient population. This has been true in the Fourth Precinct, which has become in recent years a much livelier district as far as calls upon the police service are concerned. Then, on the other hand, there are changes in certain limited districts which tend to reduce the need of police attention. Some areas change from populous residential districts to manufacturing or warehouse centers. The police problem is greatly altered in a given precinct, as in the case of a portion of the Fifth, for example, when several rows of tenement houses are torn down and a factory erected in their stead.

Not only has the character of districts changed in the past twenty years, but changes in methods of transportation have altered the problem of police work. Years ago there was little traveling at night, and identification of those who did travel was comparatively easy, whereas now the number of people moving about after dark has increased a thousandfold. The use of the automobile alone has revolutionized the police problem. The movement of automobiles must be regulated to promote safety; they must be guarded from theft; and increasing vigilance is necessary because criminals make use of them in the commission of crimes.

Notwithstanding all of these changes in the objectives of policing, the means and methods of policing in Cleveland remain practically unaltered. There has been no modification of police arrangements to correspond with the kaleidoscopic changes brought about by shifting populations and new inventions. One gets the impression in Cleveland that police organization is merely a conventional arrangement, sanctioned by usage and traditions, but with little relation to needs or neighborhoods. It looks as if it had been wrenched from widely different surroundings and poorly fitted to its new environment. The admirable adaptation of means to end, of machinery to purposes, which one finds in many European departments, is conspicuously lacking. In brief, methods and organization are not fitted to new social and criminal conditions.

It is absurd to saddle on a single official the deficiencies due to so glaring a disparity between need and system. But the new system must be worked out and administered by a new head, capable of understanding the inadequacies of the antiquated existing system and sufficiently resourceful and commanding to afford Cleveland a police department adapted to its modern conditions.

A leadership of imagination and creative intelligence is urgently needed. Under such leadership one of the first steps in reorganization would undoubtedly be a restudying and recasting of the present patrol beat boundary lines. Many patrol beats have had the same boundaries for years. Indeed, most precinct stations do not have a beat map, and even the officers are often not familiar with the exact location of the patrol posts. When, after a thorough study of present conditions and present needs, the beats are revamped, they should be left open for future changes. A beat should not be reckoned as a permanently fixed area, but should be subject to readjustment at any time in the discretion of the captain of the precinct after approval by the chief of police. Patrol beats should be laid out in the light of the ordinary demands of

each particular beat for police protection, the number of patrolmen available for duty, and the methods of patrol that may be in use or may be put into use.

In laying out patrol beats all information in regard to street blocks should be available. Such information is not now to be had in the police department. It is recommended that a card record description of every block within each precinct be prepared under the direction of the captain of the precinct, giving the following information:

- Length of block
- Kind of paving
- Kind of traffic
- General description of buildings
- Kind of street lighting
- Population statistics as to total number, nationality, number of families, permanent population, transient population
- List of such important burglary risks as banks, jewelry-stores, warehouses, etc.
- List of places to be inspected by the police, as pool-rooms, clubs, dance halls, cigar-stores with back rooms, pawn shops, etc.

There should then be a space for entering the crime record on the block description card, showing separately the number of complaints of misdemeanors and felonies and the number of arrests classified by misdemeanors and felonies. These card records of blocks should be kept up to date by the precinct commanders, and from them information should be obtained for the determination of patrol beat boundaries.

NUMBER OF POLICEMEN NEEDED

Another matter which should be considered under a progressive leadership of the police is the number of policemen necessary for Cleveland. We cannot undertake to say in any confidence whether or not the police department needs more policemen. Certainly the crime rate in Cleveland affords plenty of opportunity for work by any additional men who might be appointed to the police force. Certainly, too, the addition of more men to the patrol force or to other branches of the service would show some returns in lessening the number of crime complaints and increasing the number of crimes solved. In this connection Detroit offers an illuminating experience. Complaints of robbery were steadily reduced for a period of four months, in which the police force was increased each month. An official bulletin of the Detroit Depart-

ment discloses that in September, 1920, with a shortage of 198 men, there were 98 robberies committed, as against an average of 55 for September of the four preceding years. In October, with a shortage of 170 men, there were 74 robberies against an average of 61 for the previous four months of October. In November, with the shortage entirely made up, there were 55 robberies, against an average of 92 for the same month of the four preceding years, and in December, with the number of patrolmen brought up to 132 in excess of the regular quota by December 31, there were 48 robberies, against an average of 93 for the same month of the previous four years.

A comparison of personnel quotas and police costs in Cleveland and Detroit shows clearly the superior resources possessed by the latter city. Approximately \$4,500,000 was appropriated for Detroit's police service during the fiscal year 1920-21, while the total estimated cost for police service in Cleveland for 1921 amounted to approximately \$2,500,000. The total authorized police force in Detroit for the year 1921-22 numbered 1,926, while the total authorized force in Cleveland for 1921 numbered 1,381.

On the other hand, the fact has to be borne in mind that Detroit is larger than Cleveland by nearly 200,000. Nevertheless it is found that Cleveland has only 174 men per 100,000 population, while Detroit has 194.

Similarly, a comparison between Cleveland's police resources and those of St. Louis shows to the disadvantage of Cleveland. St. Louis is slightly smaller than Cleveland, yet the estimated expenditure for the police department in 1921 exceeded Cleveland's police cost by \$500,000. The total strength of the St. Louis force exceeded Cleveland's total force by more than 500 men. St. Louis has 250 men per 100,000 population.

The question of increasing the number of men is one of public policy, involving chiefly the amount of money that can be spared for police protection. That more policemen will mean an improvement in crime conditions is not to be debated. Whether the resulting reduction in crime is worth the additional money required of a tax- and debt-burdened city is a question with which we have no proper concern. The questions that confront us are these: Is the city of Cleveland getting all the return it should from the money now spent on patrol service? If not, where does inefficiency lie or where does failure to make the best use of resources appear? We believe greater returns could be had from the number of policemen employed at present—(1) by greatly extending the use of motor vehicles, and, in some cases, bicycles, in doing patrol work; (2)

by reducing the number of daily assignments in the horse-mounted section of the traffic division; (3) by employing some of the men in a special service or crime prevention bureau. Whether these measures, which are discussed in later sections of the report, will of themselves, without adding to the force, achieve the desired results in reducing the volume of crime, is a question which only experience can solve.

METHODS OF PATROL

At the present time regular patrol work is done on foot. The men who are equipped with horses confine their attention almost entirely to the regulation of traffic and enforcement of traffic ordinances. Special units, known as reserve squadrons, consisting of a sergeant and three uniformed men, are attached to nine of the 15 precincts. These squadrons operate in what are called, in newspaper fashion, "high-powered automobiles." They are held in reserve at precinct station houses during the day to answer emergency alarms, but at night are used in a limited way for general circulating patrol.

The results achieved by the squadrons in 1920 point clearly to the value of extending the use of motor equipment for doing regular patrol work, thereby replacing many foot patrolmen. In the sections of outlying residential districts which have good paving, motor patrol service can take the place of foot patrolmen entirely. In congested districts, however, where large numbers of people are passing on the street, it will, of course, be necessary to have patrolmen doing duty on foot and covering comparatively small beats, so that they can keep their posts constantly under eye.

The use of automobiles for patrolling the streets is in line with the best development in police work. New York, Kansas City, Detroit, and many other cities have adopted the idea, with marked success. In April of 1918 the Detroit department placed over 150 Ford automobiles on the streets to patrol beats formerly covered by foot patrolmen. Each machine carries two policemen—one in plain clothes and one in uniform. During the first month of the operation of these machines felony complaints were reduced from 654, reported in the previous month, to 528; in the second month there was a further decrease of 65 felony complaints over the previous month. "The innovation of the automobile as a preventive [of crime] has proven a great success," said an official of the Detroit department, "for two men can now do the work that formerly took four or five, and are able to do any kind of work with more success in residential districts than officers on foot."

Similarly other cities, such as St. Louis, Seattle, Los Angeles, and

Louisville, are making small beginnings in the use of automobiles for patrolling beats. The hesitation of many departments in taking up the automobile for patrol purposes is due to the expense involved in the initial outlay and maintenance charges. On the other hand, if two men equipped with an automobile can do the work of five, or perhaps eight, men on foot, a reduction in the patrol force is possible, and the saving in salaries would more than offset the cost of providing the necessary motor equipment.

The motor equipment to be used in patrol work should consist in medium-sized passenger automobiles of good quality, with perhaps a few of the smaller and cheaper cars and motor-cycles equipped with side cars. The number of men attached to a car or motor-cycle need not exceed two; they may both be uniformed, or one uniformed and one in citizen's dress. There is no work performed in the non-congested areas by patrolmen on foot which cannot be carried on in an automobile or motor-cycle. When the need for a close investigation is seen, the patrolman simply stops his vehicle and proceeds to do his work as formerly. On the other hand, much work that can be carried on successfully by using a vehicle cannot be done by the foot patrolman.

There are many positive advantages to be secured from motorized patrol service. In the first place, a patrolman riding an automobile or motor-cycle can cover from 12 to 15 times as much ground as a man on foot. Realization of this advantage can be measured in one of two ways—either by reduction of the number of men employed in patrol or in making more frequent observation of a given territory. On the present basis of the distribution of patrolmen it would be possible to cover more territory with even fewer men.

Again, patrolmen riding in cars can carry considerable equipment, often urgently needed by them, but which it is not possible for a foot man to carry. Police cars should include, as their equipment, lanterns and other bracket materials for safeguarding dangerous places, fire extinguisher for use on grass fires, towing rope, heavy firearms, and a first-aid kit. These cars can at once be converted into emergency ambulances if an occasion demands, or they may serve the purpose of a patrol wagon in taking prisoners to headquarters or precinct stations, thus cutting down the need for the present number of patrol wagons used.

Moreover, the increasing use of automobiles by criminals makes it important that policemen be equally equipped. Observations of suspected persons keeping automobiles can be effected from an automobile in a way that cannot be done from on foot. Pursuit of a fleeing auto-

mobile may be done only in another car. The greater possibilities of the unsuspected arrival of the police when equipped with an automobile is another advantage in dealing with criminal operations.

Finally, the use of motor equipment greatly promotes the physical fitness of policemen in covering large territories. In emergencies they can arrive at the scene of crime, disturbance, or accident more quickly and in better physical shape to do police duty. The protection which an automobile affords in severe weather is another item of great value to be reckoned in preserving the physical efficiency of the men.

In this connection attention must be called to an order of the Director of Public Safety, dated March 14, 1921, directing the chief to see that the use of the research squadrons be "limited to the investigation of such cases as are manifestly important." In partial explanation of what would not be "manifestly important," it was ordered that the squads do no work on crap-shooting complaints, street-corner loitering, etc. Quite apart from the fact that the director obviously overstepped his power as laid down by the charter in thus interfering with the functions of the chief, the order itself has little justification, and its results can only be to curtail the effectiveness of motor patrol. By using the squadrons in breaking up crap games and objectionable street loitering the number of serious complaints can undoubtedly be lessened, while the efficiency of the squadrons in important cases of murder or robbery will in no way be decreased.

PATROL BOOTHS

As an essential part of the system of motor patrol, patrol booths should be erected in the outlying districts of the city. This is a system which has been thoroughly tested in many cities, notably New York and Detroit. The patrol booth is in effect a miniature police station. Its chief advantage lies in the fact that a policeman in a given territory is made immediately available to citizens and headquarters alike. A proper operation of the booth system requires that not less than two men, equipped with motor-cycle or automobile, be attached to a booth at the same time. One man remains at the booth while the other circulates through the district, returning periodically to the booth. In case the booth man is absent on an emergency call, the other remains at the booth until his return. By this arrangement a district is given the benefit of patrol—in point of fact the motor-cycle or automobile man gives better patrol service than the foot patrolman, and at the same time a policeman can be had at once in case of need. Citizens naturally have a greater feeling of security in knowing that they can get a policeman immediately than in knowing that a foot patrolman is somewhere in

the district and that there is a chance that he is near enough to hear a call for help.

PRECINCT STATIONS

Precinct stations, numbering 15 at the present time, have been developed as necessary means for distributing the patrol force. The districts served by these stations vary considerably in size, and some, due to topographical peculiarities, are very irregularly laid out.

The precinct stations were established to meet the needs of the old type of patrol. When men are sent out on foot to cover their beats, it is, of course, necessary to assemble them by groups at a point near where they are to patrol. As the city grew in size it became impossible to send men from headquarters to the outlying beats, hence the need for precinct stations. This need can be reckoned in terms of yards and miles from the station house to the farthest removed post, and the time required to cover this distance. Obviously, when men proceed from the station to their beats in automobiles or motor-cycles, not as many stations will be required as under the present system of foot patrol.

It seems probable that, upon the introduction of motorized patrol, precinct lines could be reestablished, so as to reduce the number of precincts from 15 to seven or eight, allowing two on the West Side and five or six in the eastern portion of the city. This calculation is but roughly made. It is based on the following suggestions for consolidations: combining the First, Second, and Third Precincts and the westerly tip of the Fourth into one precinct that will be housed in a new headquarters building; combining parts of the Fourth, Thirteenth, and Eleventh, to form a single precinct; providing one or possibly two stations to accommodate the needs of the southwest section of the city, beyond the limits of the Fifth and Sixth Precincts. One station should suffice for that territory lying north and east of Wade and Rockefeller Parks, since there is no chance for extension on the north, and any annexations on the east would present a new situation entirely, requiring complete rearrangement of station facilities. These suggestions would need further study, but they afford an illustration, at least, of the possibility of consolidation as a result of motorized patrol.

Combinations such as those suggested above will not only increase the efficiency of the force but will lessen the cost of police administration. Every precinct means additional overhead, both in record keeping and supervision. By combining two or more precincts into one this overhead can be reduced, thereby saving in expense and contributing to a greater uniformity in police practice. Officers now performing duplicate tasks of supervision could be freed for more productive work

in other special divisions of the department. An examination of the station records and reports in the Tenth and Twelfth Precincts showed that there is a very small volume of work, and yet a full complement of officers is required to supervise approximately 35 men in each of these precincts. Seventy men, or even as many as 125, distributed over four platoons, can easily be managed in a single command and the clerical duties incident to the work of such a number of men can well be handled without addition to the number of men employed in clerical work in a single precinct. On the whole, discipline is likely to be better under the business-like aspects of a large unit than in the home-like atmosphere of small, quiet precincts.

Again, emphasis must be laid on the fact that these improvements and others of a similar nature can come only as the result of a sustained, intelligent leadership of the police. They cannot be successfully installed by law or ordinance, or by any other legislative short-cut. They must be thoughtfully matured over a period of years. They must be the result of careful planning, of fearless initiative, and wise guidance. This means a leadership of brains, free from unwarranted interference. More than anything else the Cleveland force needs such leadership today.

RECOMMENDATIONS

The patrol service should be reorganized so as to accommodate the changes which the use of motor equipment demands. It is recommended, therefore, that—

- (1) Motor equipment be used in regular patrol work.
- (2) Patrol booths be established.
- (3) Police precincts be consolidated so as to reduce the number from 15 to seven or eight.
- (4) Patrol beats be rearranged.

CHAPTER VIII

THE DETECTIVE BUREAU

THE detective bureau is the second major division of the police organization. It is a bureau of specialized operations, involving not only the solution of crimes which have occurred despite the preventive efforts of all other divisions, but the apprehension of the perpetrators who have escaped after the commission of crime. Work on the solution of murder and manslaughter cases requires considerable time, but the investigation of complaints involving loss of property is by far the largest part of the detective bureau's work. These complaints include robbery, burglary, housebreaking, grand larceny, frauds, and swindles.

The bureau is commanded by a deputy inspector of police, who is detailed by the chief of police to serve as inspector of detectives. Similarly, he may be transferred from the detective bureau at the pleasure of the chief. Two captains of police are detailed to serve as captains of detectives, assisting the inspector in command. These commanding officers are generally drawn from commands of the uniformed patrol force, instead of being taken from the detective bureau membership.

The present inspector of detectives served as a captain in command of the Third Police Precinct prior to being detailed to head the detective bureau. However, he had had some previous experience in detective work as a member of the old detective bureau. One of the two captains of detectives was previously in command of a precinct station, and later had charge of the police training school, from which he was transferred to the detective service. The other captain was originally a patrolman detailed to the detective bureau. Upon receiving his promotion to the rank of sergeant, he was transferred from the detective service to a precinct to supervise uniformed patrolmen, afterward going to the traffic division. Upon being promoted to the rank of lieutenant he was transferred to desk duty in a precinct. Later he was promoted to the rank of captain and placed in command of a precinct station. From this post he was transferred to the detective bureau.

From records of this sort it is easy to see that no attempt is made to develop detective commanders from detective personnel. The de-

tective bureau in Cleveland is directed by men who have had no adequate training in the detective business, and whose promotion to leadership depended, in the first instance, on attaining a certain rank, and only secondarily on experience and fitness. Under the present system, if a patrolman, serving as a detective, obtains promotion to the rank of sergeant, he must leave detective work and take up uniformed patrol supervision merely because there is no rank of sergeant in the detective bureau. He must then continue in the uniformed patrol or traffic service until he has attained the rank of captain before he again becomes eligible for transfer to the detective service. The detectives who do not ascend through the uniformed ranks of sergeant and lieutenant to captain are barred from attaining a post of command in the detective bureau.

There are 81 patrolmen detailed to the detective bureau at the present time. They are assigned to various duties as follows:

- 4 assigned to desk duty
- 5 to office duty—clerical work
- 5 to the automobile squad
- 4 to the bureau of criminal identification
- 3 to the taxicab quad
- 2 to the pawnshop squad
- 1 to apartment house detail
- 1 to the hotel detail
- 1 to the bank detail
- 1 to the rooming-house detail
- 50 on general assignments

Of the 50 general men, five are carried on the detective bureau roll, but assigned outside of the bureau as follows: one as a clerk in the chief's office, one to the law department for investigation of civil action cases involving possible damages to the city, one in charge of the department's telephone exchange, one as a clerk in the office of director of public safety, and one to the mayor's office, serving as the mayor's bodyguard. These men are not doing detective work and there is no justification for carrying them as detectives.

All detectives are taken from the rank of patrolmen in the uniformed force. Detectives who have served in the bureau for ten years or more are paid a salary of \$2,406.80, which is slightly more than the salary paid to lieutenants of police in the uniformed force; those with less than ten years' service to their credit receive \$2,288, which is the same as the salary of a uniformed lieutenant. Detectives are selected by the chief of police. Whether he is permitted to exercise his own judgment without influence of any sort depends on the mayor and director.

Detectives may be returned to duty in the uniformed force in the discretion of the chief of police and by his order. The privilege, however, is rarely used. The detective assignment is considered as a promotion, and loss of the assignment occurs only in such extreme cases as would result in demotion in rank in the uniformed force as a result of charges of incompetency.

POOR QUALITY OF DETECTIVES

The detective personnel is supposed to be the "cream" of the uniformed patrol force. The superior type of work demanded of detectives and the greater compensation which they receive would seem to require that they be the ablest patrolmen in the service. We doubt the truth of the presumption that the detective personnel in Cleveland is entitled to rank as a group having superior abilities. In the first place, there appears to be no adequate provision for selecting detectives on the basis of proved worth in doing the type of work required. No particular standards are followed. Not infrequently policemen are detailed to the detective bureau in recognition of daring and as a reward for the performance of some unusually good bit of work in the uniformed force, such as making an arrest at the scene of a major crime. Daring and quick wit are valuable assets to the detective, but their display in a single case does not warrant the conclusion that the men have other qualities of perception and aptitude needed in detective work. The point is that there is no regularly pursued practice of looking out for detective material or of trying men out in an apprenticeship assignment in the detective service.

Another consideration on which we base our conclusion that the detective personnel is not of the uniformly high caliber which should characterize a detective force is the low rating of the detective group in the United States Army Alpha Test. It is a singular and significant point that the detectives as a group made a lower average rating in this standard psychological test than any other group in the police service. The range of scores made by 10 different groups is shown in Table 3.¹

¹This psychological examination was made in connection with the present survey. The method of marking is as follows:

<i>Grade of intelligence</i>	<i>Explanation</i>	<i>Alpha score</i>	<i>Approximate mental age, years</i>
A	Very superior intelligence	135-212	..
B	Superior intelligence	105-134	..
C+	High average intelligence	75-104	..
C	Average intelligence	45- 74	..
C—	Low average intelligence	25- 44	11-13
D	Inferior intelligence	15- 24	9-10.9
E	Very inferior intelligence	0- 14	Below 9

TABLE 3.—MEDIAN SCORES AND RANGE OF SCORES OF POLICE DIVISIONS

Rank or division	Median	Range of scores of each division		
		Low third	Middle third	High third
Captains	98 C+	50-75	76-104	105-154
Lieutenants	95 C+	36-81	82-108	109-165
Sergeants	99 C+	28-79	79-109	110-166
Vice squad	75 C+	23-61	64- 84	84-134
Detectives	59 C	23-50	51- 71	72-131
Training school	63 C	25-56	57- 74	77-138
Traffic	61 C	5-56	56- 74	75-137
Mounted	78 C+	22-59	60- 91	92-155
Emergency	67 C	19-64	65- 80	83-150
Patrolmen	67 C	6-52	53- 82	82-170

From this record it is seen that the average of scores made by 63 detectives is 8 points below the average of scores made by 759 patrolmen doing duty in uniform, 16 points below the average score of 26 vice bureau operatives who were chosen from the uniformed force in the same way that detectives are, and 36 points below the average made by 46 lieutenants who are rated on approximately the same salary schedule as detectives.

Another basis of scoring which shows the number attaining different group ratings is given in Tables 4 and 5.

From this tabulation it is seen that no detective was rated in the A group, although all the other classes of the service had some percentage of their membership in this grouping. The percentage of detectives in the B group was less by one-half than that of any other class, and six to seven times smaller than the percentage of lieutenants, sergeants, and vice bureau operatives in the B group. Two detectives were in what is rated as the failure group, with a score of less than 25, while no member of the lieutenants, sergeants, or vice bureau classes fell so low.

Of course the Alpha test is not a complete measurement of ability. As has been pointed out, the ratings are useful as measures of general intelligence, but they do not include measurements of personality and character traits such as initiative, leadership, bravery, honesty, etc. They are measures to indicate the speed and accuracy with which persons are able to deal successfully with new situations and problems. But the comparison, even on this limited basis, is highly significant. The "cream of the uniformed force" serving as detectives should not fall below the uniformed force in a test involving general information and ability to meet new situations quickly and accurately.

TABLE 4.—DISTRIBUTION OF INTELLIGENCE RATINGS

	Captains		Lieutenants		Sergeants		Detectives		Vice bureau		Training school		Traffic police		Mounted police		Emergency motorcycle		Patrolmen	
	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.
A	1	7.1	4	8.7	7	9.9	3	4.8	4	15.4	1	2.6	1	1.2	1	2.6	1	4.0	17	2.9
B	5	35.7	13	28.3	24	33.8	15	23.8	9	34.6	3	7.7	8	10.0	6	15.8	4	16.0	52	9.0
C+	4	28.6	18	39.1	20	28.2	15	23.8	8	30.8	9	23.1	18	22.5	13	34.2	6	24.0	168	29.1
C	4	28.6	10	21.7	13	18.3	30	47.6	4	15.4	22	56.4	33	41.3	13	34.2	11	44.0	195	33.8
C-	..	..	1	2.2	7	9.9	13	20.6	1	3.8	4	10.2	16	20.0	4	10.6	2	8.0	117	20.3
D	..	..	..	..	..	..	2	3.2	..	..	..	..	3	3.8	1	2.6	1	4.0	22	3.8
E	..	..	..	..	..	..	..	..	..	..	..	..	1	1.2	..	..	..	..	6	1.1
	14	100.0	46	100.0	71	100.0	63	100.0	26	100.0	39	100.0	80	100.0	38	100.0	25	100.0	577	100.0

TABLE 5.—SUMMARY OF DISTRIBUTION OF INTELLIGENCE RATINGS

	All officers		Vice bureau		Detectives		All patrolmen		Total		Draft army	
	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.
A	12	9.2	4	15.4	..	..	21	2.8	37	3.8	..	..
B	42	32.0	9	34.6	3	4.8	73	9.6	127	13.0	9	9.0
C+	42	32.0	8	30.8	15	23.8	214	28.2	279	28.5	16	16.5
C	27	20.6	4	15.4	30	47.6	274	36.1	335	34.2	25	25.0
C-	8	6.1	1	3.8	13	20.6	143	18.8	165	16.9	20	20.0
D	..	..	..	..	2	3.2	27	3.6	29	2.9	15	15.0
E	..	..	..	..	..	..	7	0.9	7	0.7	10	10.0
	131	99.9	26	100.0	63	100.0	759	100.0	979	100.0	..	100.0

POOR WORK OF DETECTIVE BUREAU

One does not have to resort to psychological tests to prove the inefficiency of the detective personnel or the general run-down condition of the whole bureau. A glance at the organization or an examination of the reports of the men easily sustains the point. With the exception of the criminal identification section, which is ably managed, the whole bureau seems to be run on a small-town pattern. Poor office arrangements no doubt contribute in some measure to the appearance of disorder and confusion generally evident in the bureau. Clerks, officers, detectives, witnesses, and citizens shuffle around in a large room, and there is no appearance of system or method in the hurly-burly of the day's routine. Supervision of operations is poor when it is employed at all, and the records are inadequate and carelessly prepared.

Lest this be thought too sweeping an indictment of the work of the bureau, it may be well to quote some of the reports of the detectives. During the month of January, 1921, Detectives Callahan and Cowles, working together, handled 16 cases of burglary and larceny. The following are their own complete reports of their activities on burglary cases during this period:

1. "Detective Cowles and I investigated this complaint we were unable to locate the men suspected will continue on same."
2. "Detective Cowles and I investigated this complaint we were unable to get any trace of the thief or property."
3. "Detective Cowles and I investigated this complaint was unable to locate the man suspected."
4. "Detective Callahan and myself investigated above report, interviewed Mr. ——— also made inquiries in that vicinity, was unable to get any further information than original report."
5. "Detective Cowles and I investigated this complaint we were unable to learn anything on same."
6. "Detective Callahan and myself investigated above report, interviewed ——— manager also made inquiries in that vicinity was unable to get any trace off the thief or thieves. They do not suspect any one."
7. "Detective Cowles and I investigated we were unable to get any trace of the thief or property."
8. "Detective Cowles and I investigated this complaint we were unable to learn anything on same."
9. "Detective Cowles and I investigated the complaint was unable to get any trace of the thief or property."
10. "Detective Cowles and I investigated this complaint we were unable to get any trace of the thief or property this job evidently was done by boys."

11. "Detective Cowles and I investigated this complaint we were unable to learn anything on same."
12. "Det. Callahan and myself investigation above report. Interviewed Mr. — was unable to receive any further information or any trace of the Burglars."
13. "Det. Callahan and myself investigated above report, interviewed Mr. — Learned that the property stolen was insured for more than he valued it at. Satisfied this report is not Legidiment."
14. "Det. Callahan and myself investigated above report, interviewed Mr. —. Also made inquires in that vicinity, was unable to get any trace of Burglars & property. Will continue."
15. "Det. Callahan & myself investigated above report was unable to give any description. Does not suspect any one."
16. "Detective Cowles and I investigated this complaint we were unable to learn anything on same."

The above represents a whole month's work of two detectives on burglary cases. Reports of this type could be instanced almost indefinitely. In many cases they seem to show that the detectives merely verified the fact that a crime had been committed, and beyond asking a question or two of the neighbors, made no attempt to solve the mystery. Under such circumstances the wonder is not that crimes occur in Cleveland, but that any perpetrators are ever arrested.

INADEQUATE SUPERVISION OF DETECTIVE WORK

One of the significant causes of this situation just described is the lack of adequate supervision of detective operations. Apparently each detective determines for himself just how much he shall do on a given case and when he shall regard the case as closed. Of any adequate follow-up on individual cases, there is none. There is no administrative oversight to put enthusiasm and determination into the solution of individual crimes. The commanding officers of the detective bureau devote most of their time to important cases upon which newspaper comment is centered, and very little time to the less interesting task of management. Indeed, the rôle of detective officers is that of super-detective case workers rather than supervisors. The commanding officers lock their offices and go out into the field to assist in the investigation of murder cases, payroll robberies, and other important crimes. They have been accustomed also to make trips to other cities, sometimes as far away as California and New York, for the purpose of bringing to Cleveland fugitives held by the police in other jurisdictions. When the inspector of detectives makes such a trip, the detective bureau is managed by an assistant. This practice must be condemned without reserva-

tion. Ordinary detectives can be assigned to make such journeys. It is far more important that detective commanders stay on the job and keep in constant touch with the mass of less spectacular cases where the scrutiny of immediate supervision is needed. Otherwise the minor cases will slip by almost unnoticed except for a perfunctory examination by the detectives assigned to them.

Briefly, the detective bureau needs administration badly. It is impossible to spend days in solving particular crimes and at the same time supervise the operations of 80 men who are working on hundreds of cases.

RECOMMENDATIONS

One approaches the subject of recommendations for the detective bureau almost with despair. The whole department needs overhauling; the methods of work require a complete shaking up; and much of the present personnel should be gotten rid of. However, the following recommendations are pertinent to our inquiry:

1. The director of police should be given the right to recruit detectives directly from civil life through original appointments. There is no good reason for restricting the selection of detectives so that none but members of the uniformed force are eligible. The uniformed patrol force may or may not have in sufficient number the sort of material that is demanded in detective work. The chances are that the patrol force does not have the best material available in the community. It is not here proposed that all members of the detective service be taken directly from civil life. When uniformed patrolmen are found to have the qualifications for detective work, they will be preferred because of their experience. But the department should not be compelled to limit its choice of detectives as at present.

Detective work requires some men of scientific training—men having the educational foundation that will permit them to develop scientific methods of operation. There are many principles of criminology, such as the examination of the physical evidence of crime, which can only be applied and developed by specially trained men. These men cannot be drawn exclusively from the uniformed patrol force for the reason that men having scientific training do not enter the patrol service. Aside from those with qualifications of this type there are men in private life specially trained in getting information and making investigations, who would be willing to enter the detective service at the rate of pay now given detectives, provided there were an opportunity for making a creditable career. But these men would not first serve an apprenticeship of walking beats as patrol watchmen.

Detective bureaus are the weak spots in all police departments of this country, chiefly for the reason that the choice of detectives is limited to men who are recruited and trained as patrolmen. In this connection August Vollmer, head of the police department of Berkeley, California, asks the following pertinent questions: "Where is there a business concern that compels applicants for various vacancies in the organization to submit to the same physical and mental examination; where the janitor, clerk, salesman, engineer, department heads, superintendents, and managers are all compelled to answer the same questions, measure up to the same physical standards as to health, height, weight, age, and sex, and all commencing their employment at the same occupational level and at the same pay? Where is there a business concern that limits the selection of men for technical positions to employees holding inferior positions in the same establishment?" It is obvious that police departments are alone in their indefensible practices in such matters. If any real progress is to be made in detective bureau efficiency, it must come after the removal of senseless bars to getting men who have the intelligence and training needed to perform the special tasks that daily confront detectives.

2. Under any circumstances, some of the personnel of the detective bureau, perhaps a majority of it, would be recruited to the detective service from other branches of the police organization. The present method of such recruiting, however, should be changed. Instead of detailing patrolmen to become full-fledged detectives at once, there should first be an apprenticeship assignment. Members of other divisions of the service who show signs of special fitness for detective work—an ability to remember faces, a knowledge of local thieves and their habits, an ability to get accurate information and to make coherent reports—should be detailed to the detective bureau to serve as junior detectives. To require a period of apprenticeship does not constitute a discrimination against members of the force as compared with civilians who might be appointed to full detective rank. The civilians will also have had their period of try-out in some civil pursuit. As a matter of fact, the member of the police force has every advantage in securing the detective posts which do not necessarily demand scientific training. The department affords the patrolman his qualifying experience, while the outsider has not such opportunity to develop it.

Members detailed to the detective bureau from other branches of the department should be classed as junior detectives for a period of possibly two years, during which time they should be tested and observed as candidates for appointment as senior detectives. During this period of apprenticeship members should receive the salary attaching to the

rank from which they are detailed. If their detective work proves satisfactory, appointment to full detective rank may be made permanent. If, however, junior detectives do not show themselves to be adapted to detective work, they should be remanded to duty in uniform. This would not be considered such a hardship as at present, for the reason that there would be no loss in pay upon being remanded.

3. After qualifying in the period of apprenticeship or probation, as it might be called, appointment to full rank of detective should follow. Two years will not always suffice to prove a detective's ability, hence provision should also be made for remanding senior detectives to uniformed duty whenever they do not measure up to the bureau's demands. There are no soft places in detective service where the lazy or inefficient man may be shelved. "Deadwood" can perhaps be used in posts which involve routine duties and little initiative, but "deadwood" is a total loss in the detective bureau. A detective should either show continuous advancement through energetic work and the accumulation of experience or he should be put out of the detective service altogether.

Accordingly, it is proposed that, as continuance in the detective service presupposes fitness, automatic increases in salary should be given. A salary schedule should be devised which would allow some five or six increases, ranging from the lowest, approximately the salary paid to a uniformed sergeant, to a rate equaling that received by a uniformed captain of police. The schedule should be so arranged that the last increase should come about three years before the pension service retirement.

The advantages of granting salary increases to detectives without regard to changes in rank are twofold. In the first place, it would make the detective service a career of itself and would permit advancement entirely on the basis of meritorious work. In the second place, it would do away with the present situation, wherein detectives, to secure advances in rank, must compete in examinations designed to cover types of work other than those which they have been doing. It would also do away with the absurd practice of sending back to duty in the uniformed force a detective who receives promotion to the rank of sergeant, with its corresponding decrease in pay.

4. Promotion to posts of command in the detective bureau should be made from among members of the bureau, and not, as at present, from the uniformed force. The determining consideration to date has been the rank—captain and inspector—desired for commanding officers of the detective bureau. The qualification of experience has been entirely overlooked. What is wanted is not rank, but brains and ability.

5. With well-trained men in the detective bureau, under competent leadership, constant attention would have to be given to the administrative problem. After all, running a detective bureau is like running any complicated business: it requires an intimacy with detail and continual follow-up, so that every individual feels the stimulus of the leadership. In this respect the Cleveland detective bureau is conspicuously lacking at the present time. What is needed is a man in charge who will live constantly with his cases and whose guiding principle will be that no case is settled until it is solved.

6. Members of the detective bureau should do only detective work. They should not be detailed as clerks, telephone operators, or to guard the person of the mayor. They should be technical men, well paid for their abilities, and not job-holders who can be assigned to any task.

CHAPTER IX

SPECIAL SERVICE DIVISION

THE third major function of police work, crime prevention, is poorly developed in the Cleveland department. Of course, some measure of crime prevention work is aimed at by the uniformed force and detective bureau as well, but we are here considering the distinctly constructive efforts to prevent crime—efforts that cannot be employed by the uniformed force, the members of which must necessarily devote most of their attention to patrolling streets in the capacity of watchmen. Detectives are kept busy for the most part with solving crimes that have not been prevented, although they do some preventive work. The development of a special unit engaged in preventive work need not relieve the members of either the uniformed force or the detective bureau of any feeling of responsibility for taking action looking toward crime prevention. The members of a special service division, however, should be freed from the duties of watchmen, and should not have their time fully occupied with the apprehension of criminals and solution of crimes already committed. Such a division should investigate *conditions* that are known to lead to the commission of crime and should become an expert agency in handling persons who show themselves disposed to delinquency.

Inasmuch as there are practically no special facilities in the Cleveland department for undertaking constructive action in preventive work, our survey was confined to the *need* for such a service. The vice squad or bureau, as now organized, is the nearest approach to a specialized crime prevention unit in the department. This squad is organized as an independent unit under the direct supervision of the chief of police. Two lieutenants of police are assigned by the chief to command the bureau. Members of the squad are patrolmen who are detailed by the chief in the same way that patrolmen are detailed as detectives. No provision is made for recruiting directly from civil life. Members of the squad devote considerable time to the investigation of complaints referred to the vice bureau by the chief. Some of these complaints come from citizens and others originate with the uniformed force. These

complaints often relate to suspicious conditions which lead the complainants to believe that certain premises are being used for prostitution, gambling, sale of liquor, or illegal traffic in narcotics. Sometimes complaints are made against individuals, but in either case members of the vice squad must get new and additional evidence of a specific violation of law repeated some time after the violation referred to in the complaint. Thus, the vice bureau operatives are chiefly engaged in the investigation of general conditions. In their effort to develop specific charges of violation against individuals, much of their best work is done by way of anticipating the occurrence of new violations. The very investigations made by them often lead to an abandonment of activity on the part of the promoters of vice. In this respect the work of the vice squad takes on more of the aspect of crime prevention than does the work of other divisions. The vice bureau, therefore, may serve as a nucleus for building up a unit devoted to investigations of conditions and individuals with a view to forestalling criminal acts.

The attitude of police heads toward the vice bureau at present seems to be one of suspicion. The chief of police keeps in his office a complete record system, which provides a check on all complaints assigned to members of the vice bureau for investigation. Daily reports of the vice bureau's operations are submitted to the chief and the director. No other division of the police service submits such a report to the director. It was not disclosed what use, if any, the director makes of these reports. It is necessary to maintain a close check on the operatives who are subjected to such unusual temptations as are met with in combating prostitution, gambling, and traffic in liquor and drugs. But the chief should not be burdened with the details of checking 30 men in the vice bureau. Rather, he should depend on an officer of higher rank than now detailed to the vice bureau to do the checking and hold him responsible for general results as in other divisions of the service.

While complaints which are referred to the vice bureau cannot be thrown out without rendering a report of action taken thereon, it is *cases* that are supervised rather than the *methods* employed by operatives in working on the cases. An examination of the records maintained in the vice bureau discloses the fact that supervising officers do not keep adequate check on the cumulative operations of the men under their command. It would seem that too much reliance is placed on the automatic check which the mere submission of supplementary reports is supposed to afford. True, operatives are required to write up a summary of each day's work in books kept in the bureau for that purpose, and this enables the supervising officers to tell what was done by the

men on the day's cases, provided the men are always faithful in recording all cases. It does not, however, afford a means of keeping tab on complaints which are a few days or a week old. As a matter of fact, supervision in the vice bureau, as in the detective bureau, is conducted on the memory basis, which is bound to be wholly inadequate in a large department. It is simply impossible for two commanding officers to remember the multitude of assignments given to some 30 men extending over a period of weeks and months. It would be a laborious task to find out, from the record now kept, how many cases or complaints A or B is working on at any given time, or to learn from their reports what progress has been made on the cases which they have under investigation. As a result, old cases become dead cases, and are readily lost to the view of supervising officers in the shuffle of each day's new business.

OTHER CRIME PREVENTION UNITS NEEDED

As has been pointed out, the vice bureau should comprise but one section of the special service division, although it could well remain a more or less independent section. There is need for the immediate establishment of a woman's bureau, composed of not less than 10 police women. Cleveland is the only city of over a half million population that does not employ police women. The experience of such cities as London, New York, Detroit, St. Louis, Los Angeles, and Indianapolis has proved conclusively that women can perform police work of the highest order, often in a way that cannot be equaled by men. The Police Woman's Section should perform most of the duties now carried on by the Cleveland Woman's Protective Association, an organization privately financed and managed. Police women can do most effective crime prevention work in the inspection of dance halls, parks, moving-picture theaters, and other places of amusement. They can do good work in pre-delinquency cases with incorrigible girls and boys. They can also take under investigation the cases of adults who may possibly contribute to the delinquency of minors. The investigation of complaints of missing persons, which many times disclose runaway cases, can often be best handled by women. Women selected for this section of the crime prevention division should possess a strong sense of social service, and should have the training and outlook of the type of social worker employed by such private agencies as charity organizations, the Travelers' Aid Society, and the Woman's Protective Association.

At the present time dance halls are being supervised by a special unit known as the Dance Hall Inspection Bureau. This bureau is attached to the office of the director of public safety. The dance hall

inspectors, numbering about 40 deputies or special police, are not members of the police department. They are paid fees by the proprietors of the dance halls which they inspect. A clerk-patrolman detailed to the director's office assigns the inspectors and keeps a record of dance hall permits. The dance hall inspection division should be abolished and the work taken over completely by the police department, for the inspection of public dance halls is a duty which cannot properly be delegated to unofficial observers whose salaries are paid by the people they inspect. Much of this work should naturally fall to the division of women police.

A unit of welfare officers is another much-needed section of the special service division. This unit may be composed of both men and women. It should be the duty of this division to investigate the bad home conditions that make for delinquency and cases of destitution coming to the attention of the police. Another fruitful field of crime prevention service that can be performed by a welfare unit is that of giving counsel and aid to persons who are turned out of hospitals and other institutions, and who are often unwelcome in their former homes. Experience in other cities shows that such persons easily drift into a life of crime. The same field of valuable service is found in dealing with criminals who are released from institutions and prisons and thrown on the community, often without opportunity for making a living in a fair and honest way. A welfare unit should keep in touch with opportunities of employment for these persons. By helpful coöperation a sort of protective supervision may be established looking toward the redemption of many who would otherwise gravitate to vice and crime. It is a fact that parents of wayward children, and many persons who are on the verge of desperate helplessness, will frequently turn for aid to a welfare division of the police service when they would not approach the police through the ordinary channels which carry with them the idea of repression and even hostility toward those in distress.

An excellent precedent of such a unit of welfare officers exists in the system which Commissioner Woods established in New York during his term of office. Carefully chosen officers were assigned to the busier precincts of the city to ferret out conditions which seemed to be leading people astray. This experiment did not have time to prove itself before Commissioner Woods left office, but it illustrates the new technique in police work for diminishing crime.

The fourth section of crime prevention service needed is a unit of juvenile officers. Complaints of juvenile delinquency should be referred to specially selected officers, who may be chosen because of their

peculiar qualifications as experts in handling children's cases. This Juvenile Bureau or Section should coöperate actively with the Juvenile Court and make many of the investigations for the court which are now made by court probation officers. It is a police function, and the police department should not be relieved of responsibility for performing it. Juvenile officers should be distributed through the city by assignments to precincts, although general supervision of their work should be carried on by the special service division at headquarters. The work of juvenile officers attached to precincts in Chicago affords an excellent example of the value of such a division. The long-established juvenile bureaus in the Detroit and Los Angeles police departments likewise have proved the value of employing a special unit engaged in crime prevention among children.

All of the special activities mentioned above should be consolidated in a single division devoted to the more constructive features of crime prevention. One of the highest ranking officers in the service should be selected by the director of police to head this important division. His duty would be to survey general conditions in the city which indicate opportunity or need for corrective crime prevention measures. He should then see that the various sections of his division are well co-ordinated. Although the several fields of work are specialized, there is much opportunity for active coöperation. Thus, members of the vice bureau, in the course of their investigation of complaints of gambling and sex delinquencies, run across hangers-on and idlers against whom they may not proceed with formal charges, but who, nevertheless, may properly be investigated. Information regarding these border-line cases of delinquency should be handled by the Police Woman's Section, Welfare Section, or Juvenile Section, as the case may warrant. Similarly, the investigations conducted by the Police Woman's Division or Welfare officers will many times disclose conditions that should be investigated by the vice bureau. It is important that the common factors of a crime prevention program be recognized and that the agencies carrying out such a program be closely knit together. There should be a single head directing the development of a crime prevention program in its several aspects.

Members of the special service division who are not engaged on specific assignments should keep in constant touch with the breeding places of crime throughout the city. Insistent police surveillance of pool-rooms, cigar-stores having back rooms, hotels and lodging-houses, and the other places where there is customary idling will do much to prevent the commission of petty crimes on the spot and the hatching of

crimes to be committed elsewhere. The young criminal is a gregarious being, and idling with bad associates is the primary requirement for sending him or her on the road to some criminal act.

It is not necessary for the police to wield a club or even to proceed with a warrant in many cases. They can, wholly within their legal rights, so interfere with idling that it may be largely broken up in public places. By sending a boy home or questioning an idler or by making many inquiries of the origin and intentions of idlers, the police can make idling uncomfortable instead of interesting and at times profitable. It requires groups of idlers to keep alive the contacts of the underworld, which show the way to traffic in drugs, liquor, and prostitution. Crimes ordinarily produced by these associations cannot flourish when the police are ever questioning and scrutinizing.

The importance of having a separate division recognized as the responsible agency in the department for the promotion of facilities for constructive efforts of crime prevention cannot be overestimated. When such a division is established, there will be a logical place for inaugurating new practices and experiments in social service and pre-delinquency activities, thus avoiding haphazard creation of a number of small new units which are likely to be poorly organized and inadequately supervised. Finally, the special service division should become the police department's liaison division between schools, hospitals, and private charitable and correctional institutions. Because of the character of its work, such a division could readily secure a degree of coöperation with other agencies of social service that is not now usually had by any other branch of the police department.

It must be admitted that this whole idea is new in police work in America, but its basic idea gives shape to the police work of the future. There is as much room for crime prevention in our communities as for fire prevention or the prevention of disease, and in this endeavor to limit the opportunities of crime and keep it from claiming its victims the police department must take the leading part.

CHAPTER X

THE SECRETARIAL DIVISION

THE work properly belonging to the office of a secretary of the police department is now scattered among several offices and divisions, with almost no coördination. There is a waste in men employed in the various tasks relating to record keeping, filing, and correspondence. Furthermore, the work that is being done is inadequate.

Personnel service records, payrolls, equipment, repair, and supply records are prepared and kept in the office of the director of public safety, and certain classes of permits, such as for dances and parades, are issued from that office. A detective and a patrolman are detailed there to care for a portion of the police work. Other clerks devote part of their time to clerical work which pertains to the administration of the fire department as well as police. All the correspondence and stenographic work of the police department is done in the office of the chief of police. One detective, two sergeants, and three patrolmen are detailed to do this work. Personnel records duplicating those kept in the director's office are also filed in the chief's office.

The bureau of records cares for the preparation and filing of pawnshop and lost property records, and all records relating to the license, ownership, and identification of automobiles. In this bureau also are filed all criminal complaints and copies of reports made by the various divisions of the department. Six patrolmen are detailed to serve as clerks in this bureau. There is no officer in command, the patrolmen severally assuming responsibility for the management of the bureau during the eight-hour period when they are on duty. The record bureau is cramped in a small room on the first floor of the police headquarters building. It is poorly ventilated and lighted by a single window opening on a court. Records are not protected from fire. The record bureau facilities of the police departments in Detroit, where the whole top floor of the headquarters building is given over to the record bureau, and in St. Louis, where an enormous well-lighted room is used for the record bureau, are in striking contrast to Cleveland's meager facilities.

A clear duplication of record keeping is found in an office known as

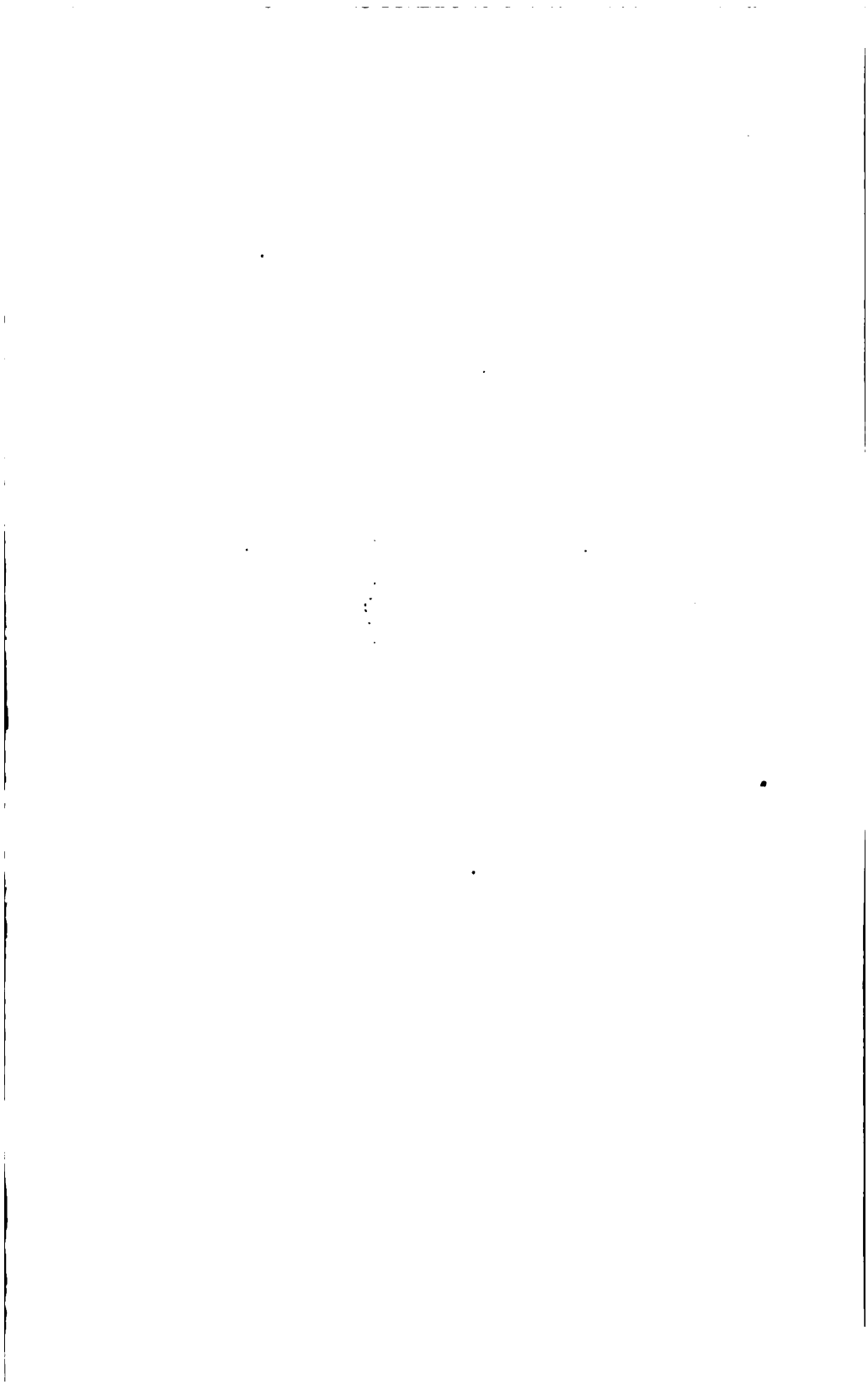
the bureau of information, which has no organic relation to any clerical division and no particular place in the scheme of organization. Three sergeants and three patrolmen are detailed to this office. Three additional men are attached to a telephone desk on another floor. These desk officers also belong to the bureau of information. A sergeant of police, known as the court sergeant, has an office adjoining the municipal court. This officer keeps a record of cases presented in court and also prepares statistics of daily crime complaints.

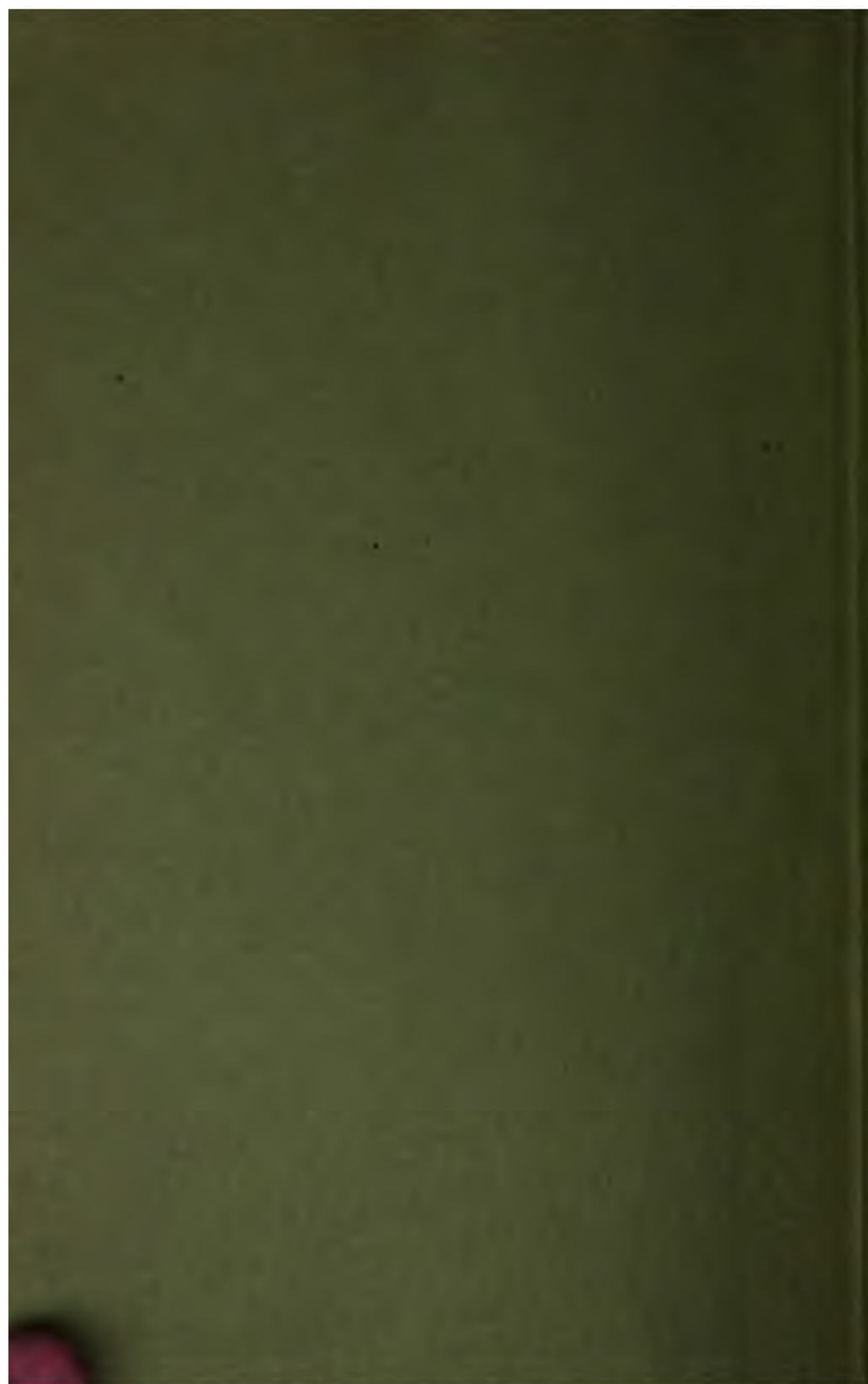
All of the offices mentioned above should be combined in a single division under the management of a secretary of the department. Civilian clerks and stenographers—most of them girls—should be employed to do the work in the place of policemen. Clerks trained and experienced in clerical duties can do the work better and at far less cost than at present. It is absurd to employ detectives and sergeants of police in activities of this kind.

The secretarial office should be organized in several sections, as, for example, the correspondence section, the filing section, the information desk, and the division of statistics. Combined in one bureau, all this work which is now scattered throughout the department could be coordinated in a way that would increase its effectiveness and greatly reduce its cost.









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